92-1625

No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA and
UNITED MINE WORKERS OF AMERICA, DISTRICT 28,
Petitioners,

v.

JOHN L. BAGWELL; CLINCHFIELD COAL CO.; and
SEA "B" MINING CO.,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Virginia

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX

SUPREME COURT OF VIRGINIA

Nos. 910634, 920299

JOHN L. BAGWELL, Special Commissioner

v.

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*

v.

CLINCHFIELD COAL COMPANY, *et al.*

Nov. 6, 1992

Present: CARRICO, C.J., and COMPTON, STEPHENSON, WHITING, LACY and HASSELL, JJ., and HARRISON, Retired Justice.

STEPHENSON, Justice.

In these consolidated appeals, the principal issue we address involves the validity and enforceability of certain contempt fines imposed by the trial court against International Union, United Mine Workers of America and International Union, United Mine Workers of America, District 28 (collectively, the Union) for the Union's violation of the court's injunction.

I

In early April 1989, the Union called a strike against Clinchfield Coal Company and Sea "B" Mining Company (collectively, the Company) after the expiration of a collective bargaining agreement between the parties. Thereafter, the Company undertook to conduct its operations by using replacement workers.

On April 12, 1989, the Company filed a verified bill of complaint against the Union seeking to have the trial court enjoin the Union from engaging in certain alleged unlawful activities. On April 13, 1989, following an evidentiary hearing, the court enjoined the Union and its members from obstructing certain entrances to the Company's property, from throwing rocks and other objects at vehicles and persons engaged in the Company's operations, from placing objects designed to cause damage to vehicle tires upon any surface that might be used by vehicles engaged in the Company's operations, and from intimidating and threatening physical harm to persons engaged in the Company's operations and to members of their families. The court also limited the number of pickets at various locations. On April 21, 1989, the court amended and strengthened its injunction upon a finding that, notwithstanding the initial injunction, "serious incidents of mass picketing, roving picketing, violence, threats, intimidation, and property destruction have continued."

For the duration of the strike, the Union engaged in wholesale violations of the court's injunction. The court responded to these violations by entering a series of orders finding the Union guilty of civil contempt. In an effort to compel compliance with its injunction, the court established a prospective fine schedule. When violations persisted, fines were assessed against the Union in accordance with the previously established schedule.

On September 21, 1989, the court appointed special commissioners to collect the increasing, but unpaid, fines.

John L. Bagwell, appellant in Record No. 910634, later was substituted as special commissioner to collect the fines.

The Union appealed eight contempt orders to the Court of Appeals, contending that the fines assessed were criminal sanctions imposed in a civil proceeding and thereby violative of certain constitutional guarantees. Five of the orders are involved in Record No. 910634, and the remaining three orders are involved in Record No. 920299.

Prior to oral argument in the Court of Appeals, the Union and the Company settled the underlying strike and their litigation. Thereafter, the Union and the Company moved the trial court to vacate all fines. The trial court vacated those fines that were payable to the Company.[1] The trial court, however, refused to vacate the fines payable to the Commonwealth and to Russell and Dickenson Counties. These fines are the subject of these appeals. In its reply briefs in the Court of Appeals, the Union asserted that the strike settlement mooted the subject fines.

While the first appeal (Record No. 910634) was pending in the Court of Appeals, but after oral argument, Bagwell petitioned to be made a party in the appeal or, in the alternative, to be permitted to file a brief *amicus curiae*. The Court of Appeals refused to allow Bagwell to intervene but permitted him to file an *amicus curiae* brief. Subsequently, the Court of Appeals ruled, in a two-to-one decision, that the fines were mooted by the settlement of the strike. *United Mine Workers v. Clinchfield Coal Co.*, 12 Va.App. 123, 402 S.E.2d 899 (1991).

We awarded Bagwell an appeal in Record No. 910634. At the same time, we certified Record No. 920299 from the Court of Appeals and consolidated the two appeals.

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[1] It is not clear from the record that all fines payable to the Company were expressly vacated. The parties, however, agree that these fines were vacated.

II

The evidence of injunction violations is too voluminous for a detailed recitation. It consists of many days of testimony by approximately 260 witnesses and numerous exhibits. Significantly, the Union has not challenged the sufficiency of this evidence in these appeals.

In the early stages of the strike, the violations were largely of a nonviolent nature consisting mainly of mass picketing and sit-ins to block ingress to and egress from the Company's property. In the first contempt order, entered on May 18, 1989, the court found 72 separate violations of its injunction, only 15 of which were violent.[2] In that order, the court established its prospective fine schedule for future injunction violations. The schedule provided for fines of $100,000 for each violent violation and $20,000 for each nonviolent violation.

The court conducted a second contempt hearing on June 2, 1989. This hearing produced evidence of continued blockage of the Company's entrances and exits by mass picketing and sit-ins. By an order entered June 7, 1989, the Union again was held in contempt, and fines were imposed in accordance with the established fine schedule. These fines, totalling $2,465,000, were payable to the Commonwealth. The contempt order stated that "[i]t is the Court's intention that these fines are civil and coercive."

Following the second contempt order, the Union changed its strategy. The Union planned to delay and impede the Company's movement of coal by the use of slow-moving automobile convoys manned by Union members and out-of-state sympathizers. To support this effort, the Union opened "Camp Solidarity" as a place for the

[2] The court imposed $642,000 in fines, $424,000 of which were suspended, for these violations. These fines subsequently were vacated because the trial court determined that they were "criminal in nature."

participants to congregate and organize the convoys. Approximately 1,000 persons would stay at the camp.

A multitude of violent acts accompanied this new strategy, including gunfire directed at coal truck drivers' vehicles. Consequently, on July 27, 1989, the court entered a third contempt order. In this order, the court found the Union guilty of 46 injunction violations and imposed fines totalling $4,465,000, of which $2,000,000 was ordered to be paid to the Commonwealth, $1,465,000 to Russell County, and $1,000,000 to Dickenson County. In its pronouncement from the bench following the third contempt hearing, the court stated, *inter alia*, the following:

> [The court] find[s] that . . . [the Union] and [its] members have engaged in acts of violence that are directly related to their picketing in this labor dispute and that they have been characterized by mass picketing and blocking of rights of ways, both public and private; the hurling of rocks and other missiles at vehicles; . . . and . . . have intimidated or attempted to intimidate by threats and by violence members of this community who are attempting to exercise their rights to go to work and make a living under the Virginia law.
>
> . . . .
>
> This court's injunction is designed to keep the peace here in Virginia and to be sure that . . . the citizens of this state, in these communities, can live in peace, free from the acts of terror which have been committed upon this community.

Following the third contempt order, the court heard testimony from more than 60 witnesses concerning escalated violence. The record is replete with evidence of incidents of rock-throwing and the use of "jackrocks." [3]

[3] A "jackrock" is made from nails welded together in such a way that a point is always aimed upward when the device is thrown upon the ground. These devices are designed to puncture vehicle tires.

Coal truck drivers and Company personnel and members of their families were subjected to attacks and intimidation. Numerous vehicles were damaged by various devices. The record also discloses that Union officials took active roles in these unlawful activities.

Thus, on September 21, 1989, the Union again was found in contempt for 65 violent and 24 nonviolent violations of the injunction. Following the established fine schedule, the court fined the Union a total of $16,900,000 and directed that it be paid as follows: $6,000,000 to the Commonwealth, $4,500,000 to Russell County, and $3,000,000 to Dickenson County. The court also directed that the remainder, $3,400,000, be paid to the Company; however, this fine was vacated subsequently.

In its fifth contempt order, entered on October 9, 1989, the court found 69 additional violent violations of its injunction. The acts were similar to those previously described, to-wit: rock throwing, jackrocking, intimidation, etc. The court, in accordance with the established fine schedule, assessed the Union an additional $6,900,000 in fines, of which $2,500,000 was made payable to the Commonwealth, $1,200,000 was made payable to Dickenson County, and $1,800,000 was made payable to Russell County. The court directed that $1,400,000 be paid to the Company; however, this fine was vacated subsequently.

By its sixth, seventh, and eighth contempt orders, which are the subject of appeal in Record No. 920299, the trial court found continuing injunction violations which were similar in nature to the violations previously described. In addition, the trial court found that the Union had taken posssesion of the Company's coal processing plant on September 17, 1989, and had unlawfully occupied it for four days.

The court, in the sixth contempt order entered November 16, 1989, found 72 injunction violations, 40 of which

were violent. These acts of violence included physical beatings and death threats. Fines totalling $15,800,000 were levied in accordance with the established fine schedule. The court later vacated $3,000,000 of these fines which were to have been paid to the Company. The court directed that the remainder of the fines be paid as follows: $5,700,000 to the Commonwealth, $4,350,000 to Russell County, and $2,750,000 to Dickenson County.

Following a hearing on November 15 and 16, 1989, the court entered its seventh contempt order. In this order, entered on December 15, 1989, the court, in accordance with the established fine schedule, imposed fines totalling $7,300,000 for 31 violations, 24 of which were violent. The court directed that the fines be paid as follows: $2,650,000 to the Commonwealth, $2,000,000 to Russell County, and $1,250,000 to Dickenson County. The court also directed that the remainder, $1,400,000, be paid to the Company; however, this fine was vacated subsequently.

On December 7 and 8, 1989, the Union again was before the court for violating the injunction. In its eighth contempt order, entered on December 15, 1989, the court found 38 violations of its injunction, 32 of which were violent, and, following its established fine schedule, imposed fines of $10,300,000, of which $3,700,000 was made payable to the Commonwealth, $2,800,000 was made payable to Russell County, and $1,800,000 was made payable to Dickenson County. The court later vacated $2,000,000 of these fines, which were to have been paid to the Company.

III

The Union has moved for a dismissal of Bagwell's appeal (Record No. 910634) on four grounds. First, the Union contends that Bagwell does not have standing to appeal because he has no personal interest in the subject of this litigation. The Union asserts that, as a special

commissioner of the court, Bagwell is merely a ministerial officer of the court. Therefore, the Union concludes, Bagwell cannot attain the status of a party. According to the Union, only the Company, the adverse litigant, has standing to defend and collect contempt fines payable to the Commonwealth or its political subdivisions.

In order to determine whether Bagwell is a ministerial officer of the court or someone entitled to party status, we must look to the purpose of his appointment. We also must look to the powers and duties granted to him by the court.

For more than six months, the trial court had tried, without success, to curb the Union's unlawful conduct by imposing contempt fines. Finally, by exercising its inherent equity power, the court appointed special commissioners to collect the accumulated fines. The initial order of appointment stated as follows:

> It appearing to the Court that the defendants have not paid any of the previously liquidated fines, and the defendants advising the Court that no efforts are foreseen to effect payment of such fines, it is therefore FURTHER ORDERED that. . . . [the] special commissioners are directed to proceed immediately to collect all such fines and are authorized and empowered to undertake all necessary or convenient means of collection, including, but not limited to, docketing, interrogatories, levy, execution, garnishment, attachment, and creditor's bill, wherever the defendants may have property or assets, until all such fines are paid in full. In addition, said special commissioners upon petition to the Court for leave so to do shall have the power to employ counsel and accountants to assist them in their work. All fines collected shall be paid to the Clerk of this Court and distributed by the Court.

Subsequently, the court appointed Bagwell in the place of the original special commissioners. The court, in a

pronouncement from the bench, made clear Bagwell's role:

> The Court is . . . appointing Mr. Bagwell to act in the stead of the Commonwealths' Attorneys of these two jurisdictions which are affected, Russell and Dickenson Count[ies], Virginia, as both of their Commonwealths' Attorneys have asked to be disqualified. . . . [The court] want[s] this Order to reflect that [Bagwell] is appointed to act as Commonwealth Attorney for any collection procedures that are necessarily implemented by the Commonwealths' Attorneys.

The order of appointment provides additional insight into Bagwell's powers and duties:

> John L. Bagwell is hereby appointed special commissioner in the place and stead of the former special commissioners and as attorney to act in the place and stead of the Commonwealth's Attorneys for Russell and Dickenson Counties to collect all unpaid and unbonded fines. . . . John L. Bagwell, who has been designated to succeed [the original commissioners] as special commissioner, shall succeed to all the functions, powers, duties and obligations of the prior special commissioners. . . . The said John L. Bagwell shall have authority to take all actions as may be necessary to collect the fines including but not limited to the filing of legal actions, pleadings, notices, liens, the retaining of other attorneys, accountants experts and others necessary, but with prior approval of the Court, in any jurisdiction necessary to effect the intent of this Order.

The Union relies upon *Brown v. Howard*, 106 Va. 262, 55 S.E. 682 (1906), in support of its contention that Bagwell has no standing to appeal. It argues that *Brown* "is dispositive as to the restricted parameters" of the role of a special commissioner.

In *Brown*, a special commissioner appointed in a court's decree to sell real property sought to appeal the court's action in setting aside that decree. 106 Va. at 263, 55 S.E. at 683. In dismissing the appeal for want of jurisdiction, we noted that "[t]he record fails to disclose that the [special commissioner] has any personal interest in the subject matter of [the] litigation." *Id.* We also stated that the special commissioner was "a mere ministerial officer of the court, whose powers and duties, *ipso facto*, ceased upon the setting aside of the decree of sale." *Id.*

Brown is distinguishable from the present case because Bagwell, unlike the special commissioner in *Brown*, is clothed with broad powers and duties. Indeed, Bagwell was appointed to act in the place and stead of the attorneys for the Commonwealth, and, as such, he is the special attorney for the Commonwealth and the Commonwealth's agent for the collection of the fines. Additionally, unlike the special commissioner in *Brown*, Bagwell's powers and duties have not been terminated, but, according to the order of appointment, are to continue "until all . . . fines are paid in full." Thus, by intervening in and prosecuting this appeal, Bagwell would be discharging the duties of his office. *Brown*, therefore, is inapposite.

Accordingly, we hold that, under the particular facts and circumstances of this case, Bagwell is the one party who does have standing to represent the interests of the Commonwealth and two of her counties in defending the validity of the subject fines.

Second, the Union contends that, even if Bagwell has standing to appeal, he should not be permitted to intervene in the first instance on appeal. Third, the Union contends that, even if a party may intervene in the first instance on appeal, the granting or denying of a motion to intervene is discretionary with a court and that the Court of Appeals did not abuse its discretion in denying the motion.

Intervention is "[t]he procedure by which a third person, not originally a party to the suit, but claiming an interest in the subject matter, comes into the case, in order to protect his right or interpose his claim." *Black's Law Dictionary* 820 (6th ed. 1990). We previously determined that Bagwell claims an interest in the subject matter of this appeal, *i.e.*, the fines payable to the Commonwealth and to the counties. Unquestionably, he sought intervention in order to protect his right, to interpose his claim, and to discharge successfully the duties of the office imposed upon him by the court.

We previously have not decided whether a party may intervene in the first instance on appeal. In the present case, the Company suddenly withdrew as appellee while this appeal was pending in the Court of Appeals. Consequently, only Bagwell, as special commissioner, could have urged the Court of Appeals to uphold the validity of the subject fines. He was the logical replacement for the Company in that role. Moreover, the Union could not have been prejudiced by his intervention. Thus, under the circumstances of this case, we hold that the Court of Appeals erred in denying Bagwell's motion to intervene.

Finally, the Union contends that, even if Bagwell had the right to intervene and the Court of Appeals erred in denying intervention, Bagwell's appeal was not filed timely. We do not agree. The order denying intervention was not a final, appealable order because it did not dispose of the whole subject matter of the case. *See Burns v. The Equitable Associates*, 220 Va. 1020, 1028, 265 S.E.2d 737, 742 (1980). Bagwell's appeal from the Court of Appeals' order disposing of the whole subject matter of the case was filed timely.[4]

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[4] We also reject the Union's claim that Bagwell, by the filing of a brief *amicus curiae* in the court of appeals, waived his objection to the denial of his motion to intervene. By accepting a less favorable ruling, a litigant does not waive his objection to a denial of what would have been a more favorable ruling.

IV

Having determined the procedural issues, we now consider whether the fines payable to the Commonwealth and to the two counties are valid and enforceable. In Record No. 910634, the Court of Appeals assumed, without deciding, that the subject fines were civil sanctions and determined that the fines were coercive, rather than compensatory. 12 Va.App. at 128-29, 402 S.E.2d at 902-03. The Court of Appeals further held that "civil contempt fines imposed during or as a part of a civil proceeding between private parties are settled when the underlying litigation is settled by the parties and the court is without discretion to refuse to vacate such fines." *Id.* at 133, 402 S.E.2d at 905. Accordingly, the Court of Appeals ruled that the fines involved in this appeal are moot. *Id.* at 134, 402 S.E.2d at 905. Bagwell assigns error to this ruling.

Bagwell contends that the subject fines are prospective, coercive, civil contempt fines that are not rendered moot by the settlement of the underlying labor dispute. The Union contends that the fines are criminal in character and, therefore, are invalid because they were imposed without the mandated constitutional protections. The Union further contends that, even if the fines are civil, the Court of Appeals properly vacated the fines as moot.

A

Contempts are classified as either "criminal" or "civil," although each " 'may partake of the characteristics' " of the other. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441, 31 S.Ct. 492, 498, 55 L.Ed. 797 (1911). "It is not the fact of punishment but rather its character and purpose, that often serve to distinguish between the two classes of cases." *Id.*

The punishment, whether fine or imprisonment, is deemed to be criminal if it is determinate and unconditional, and such penalties "may not be imposed on some-

one who has not been afforded the protections that the Constitution requires of such criminal proceedings." *Hicks v. Feiock*, 485 U.S. 624, 632-33, 108 S.Ct. 1423, 1429-30, 99 L.Ed.2d 721 (1988). The punishment is deemed to be civil if it is conditional, and a defendant can avoid such a penalty by compliance with a court's order. *Id.* at 633, 108 S.Ct. at 1430. Civil contempt sanctions are either compensatory or coercive. Compensatory, civil contempt sanctions compensate a plaintiff for losses sustained because a defendant disobeyed a court's order. Coercive, civil contempt sanctions are imposed to compel a recalcitrant defendant to comply with a court's order. *See, e.g., United States v. United Mine Workers*, 330 U.S. 258, 303-04, 67 S.Ct. 677, 700-01; 91 L.Ed. 884 (1947); *Gompers*, 221 U.S. at 448, 31 S.Ct. at 500; *United States v. Darwin Const. Co., Inc.*, 873 F.2d 750, 753-54 (4th Cir.1989).

To determine whether the fines imposed in the present case are valid and enforceable, we first must determine what type of contempt fines were assessed by the trial court. After its first contempt hearing, the trial court found that the Union had committed numerous injunction violations and imposed fines therefor. These fines were determinate and unconditional. Subsequently, however, the court vacated these fines, concluding that they were criminal in nature and, therefore, violative of the Federal Constitution. Clearly, the trial court ruled correctly in vacating these fines.

Significantly, the court, in its first contempt order, established a prospective fine schedule in an effort to coerce the Union into complying with the court's injunction. The judge clearly stated his position at that time.

> [T]he union and its members are responsible for how much money . . . is going to be paid, not this Court, not the company, not anyone else. If you go out and violate the law, you are taking that action

> of your own free will and . . . you will pay the consequences, because it is your act.
>
> . . . .
>
> I firmly believe that the fate of the union with regard to these violations is in the hands of those members and leadership that we have seen here in court today. . . . I sincerely hope that you will be able to conduct yourself in a law abiding manner. . . .

Following the second contempt hearing, the court found that the Union had committed numerous additional violations of its injunction. Accordingly, the court imposed fines in accordance with the previously established fine schedule. Again, the judge made clear the reason for the fine schedule, stating, "I don't know how much money these two defendants are willing to pay before they will obey the law. I hope [the fine schedule] will deter any further violations."

As time passed, the violations increased in frequency and became more violent. Indeed, after the third contempt hearing, the court described the situation as follows:

> [T]his . . . has been a strike . . . that is characterized by violence and terrorism on the part of the members of the [local district] acting for the International Union in carrying out this strike here in Southwest Virginia against the Plaintiffs. It has become a situation that this Court feels is intolerable.

It is abundantly clear from the record that the court established the fine schedule and thereafter imposed the subject fines in an effort to coerce the Union into compliance with the court's injunction. The court continued to make clear that the Union had the power to avoid imposition of fines.

> The Court is convinced, as [it has] stated numerous times, that this is a civil contempt proceeding. The only way that any fines or any penalties can be assessed is for the defendants to fail to comply with the Court's injunctive orders and the laws of the Commonwealth of Virginia as [they] are stated or . . . outlined in the order. This is not punitive. It is compulsory. It is designed to compel compliance and therefore it is not criminal in nature but civil.

Notwithstanding the trial court's clear intent and its consistent imposition of fines pursuant to the previously established fine schedule, the Union asserts that the fines are criminal in nature and, therefore, invalid. The Union acknowledges that civil contempt fines are valid when they are imposed to coerce a party to perform an *affirmative act*. The Union contends, however, that where, as here, the injunction *prohibits* the doing of an act, all fines imposed for violating the prohibition are criminal sanctions. We reject this contention because we think it presents a distinction without a difference.

When a court orders a defendant to perform an affimative act and provides that the defendant shall be fined a fixed amount for each day he refuses to comply, the defendant has control of his destiny. The same is true with respect to the court's orders in the present case. A prospective fine schedule was established solely for the purpose of coercing the Union to refrain from engaging in certain conduct. Consequently, the Union controlled its own fate.

Thus, we hold that the fines in question are valid, coercive, civil fines. It is important to reiterate that the Court of Appeals also concluded that "these fines [are] coercive civil fines, not compensatory civil fines." 12 Va.App. at 129, 402 S.E.2d at 903. Furthermore, other courts share our view respecting the validity of employing a prospective, civil fine schedule to coerce defendants into future compliance with a court's *prohibitory* injunction. *See, e.g., New York State Nat. Organization For Women v. Terry*, 886 F.2d 1339, 1351 (2d Cir.1989), *cert. denied*, 495 U.S. 947, 110 S.Ct. 2206, 109 L.Ed.2d 532

(1990); *Aradia Women's Health Center v. Operation Rescue*, 929 F.2d 530, 532-33 (9th Cir.1991); *Clark v. International Union, UMWA*, 752 F.Supp. 1291, 1297 (W.D.Va.1990).[5]

B

Next, we must determine whether the subject fines are moot. The Union contends that, even if the fines are valid, the Court of Appeals correctly held that they became moot when the underlying litigation between the Company and the Union was settled. We agree with the Court of Appeals that "whether civil contempt sanctions are mooted by subsequent settlements by the private parties to the litigation is a matter of state law" and that we previously have not addressed the issue. 12 Va.App. at 132, 402 S.E.2d at 904. We do not agree with the Court of Appeals, however, in its conclusion that the settlement mooted the fines.

In reaching that conclusion, the Court of Appeals relied upon *Local 333B, United Marine Division v. Commonwealth*, 193 Va. 773, 71 S.E.2d 159, *cert. denied*, 344 U.S. 893, 73 S.Ct. 212, 97 L.Ed. 690 (1952), and *United Steelworkers v. Newport News Shipbuilding*, 220 Va. 547, 260 S.E.2d 222 (1979). 12 Va.App. at 132, 402 S.E.2d at 904-05. Neither of these cases, however, supports the Court of Appeals' conclusion.

Local 333B dealt exclusively with criminal contempt, and we simply affirmed the procedure of transferring the criminal contempt proceeding from the equity to the law side of the court. 193 Va. at 780, 71 S.E.2d at 164. The case did not involve coercive, civil fines, and mootness was not an issue.

In *United Steelworkers*, we held that the trial court improperly imposed unconditional, criminal sanctions in

[5] *Clark* arose out of the strike involved in the present appeals and also concerned coercive, civil contempt fines and the issue of their mootness. The *Clark* court refused to vacate the fines upon settlement of the underlying litigation. 752 F.Supp. at 1302.

the course of a civil contempt proceeding. 220 Va. at 551, 260 S.E.2d at 225. Coercive, civil fines were not involved in the case, and the court was not presented with a mootness issue.

Courts of the Commonwealth must have the authority to enforce their orders by employing coercive, civil sanctions if the dignity of the law and public respect for the judiciary are to be maintained. If we were to adopt the Union's mootness contention, any organization which faced coercive, contempt fines would know that, in order to completely avoid payment of the fines, it only had to postpone actual collection of the fines until the settlement of the underlying litigation.

Thus, we hold that the fines in question are not moot. While the mootness issue is governed by state law, our resolution of the issue is consistent with federal decisions. *See, e.g., United States v. Criden*, 633 F.2d 346 (3d Cir.), *cert. denied*, 449 U.S. 1113, 101 S.Ct. 924, 66 L.Ed.2d 842 (1980); *United States v. Work Wear Corp.*, 602 F.2d 110 (6th Cir.1979).

Nor is our holding inconsistent with *Gompers*, which is relied upon by the Union and which is distinguishable. In *Gompers*, the defendants were found to have violated an injunction that prohibited, among other things, the continuation of a boycott against the complainant company. 221 U.S. at 419, 31 S.Ct. at 492. The complainant company sought such "relief as the nature of its case may require," *id.* at 423, 31 S.Ct. at 493, whereupon the court improperly sentenced the defendants to jail terms, *id.* at 425, 31 S.Ct. at 494. The company then moved for " 'its costs against the defendants under the proceedings in contempt against them,' " which motion the trial court granted. *Id.* While an appeal of the criminal sanctions and compensatory, civil sanctions was pending in the Supreme Court, the parties settled their dispute. *Id.* at 427, 31 S.Ct. at 495. The Supreme Court set aside the criminal sanctions and ruled that the settlement of

the underlying dispute mooted the company's claim for compensatory, civil relief. *Id.* at 451-52, 31 S.Ct. at 501-02.

In *Gompers*, unlike in the present case, the only relief sought was compensatory relief to be paid to the complainant company, which had settled its case. *Gompers* did not involve coercive, civil contempt sanctions.

V

The Union further contends that the subject fines are so excessive that they violate substantive due process and federal labor policy. The Union relies primarily upon *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. ——, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991), and *Browning-Ferris Industries v. Kelco Disposal, Inc.*, 492 U.S. 257, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989), in support of its due process contention. These cases, however, deal with the issue of punitive damages and have nothing to do with coercive, civil fines imposed for contempt of court.

Likewise, the cases cited by the Union to support its federal-labor-policy contention, *Union Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966), and *Farmer v. United Brotherhood of Carpenters*, 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977), do not address the imposition of coercive, civil contempt fines. Additionally, it is firmly established that federal labor relations statutes do not preclude a state from exercising its powers to maintain law and order during a strike. *Lodge 76, Etc. v. Wisconsin Employment Rel. Comm'n*, 427 U.S. 132, 136, 96 S.Ct. 2548, 2550, 49 L.Ed.2d 396 (1976); *Local No. 1111, Etc. v. Wisconsin E.R. Board*, 315 U.S. 740, 748-49, 62 S.Ct. 820, 824-25, 86 L.Ed. 1154 (1942).

Admittedly, the fines in the present case are large. However, considering the Union's vast financial resources and the magnitude of the injunction violations, we cannot say that they are excessive as a matter of law. As

previously noted, the imposition of fines was the only device available to the trial court to coerce the Union into compliance with the court's injunction. Notwithstanding the large fines, the Union never represented to the court that it regretted or intended to cease its lawless actions. To the contrary, its utter defiance of the rule of law continued unabated. Indeed, the record discloses that the Union committed more than 500 separate violations of the trial court's injunction.

VI

Finally, the Union contends that the trial judge erred in refusing to recuse himself. (Record No. 920299). The Union based its recusal motion on two incidents: (1) the defeat of the judge's father's bid for reelection to the Virginia House of Delegates by a Union official, and (2) an alleged confrontation between the judge's father and a Union member that resulted in a criminal misdemeanor charge having been lodged against the father.

When these incidents occurred, the trial court's injunction had been in effect for more than six months. Also, several contempt hearings had been conducted, and a number of contempt orders imposing large fines had been entered well in advance of the Union's motion for recusal.

Whether a judge should recuse himself in a given case is a matter resting within the exercise of his reasonable discretion. *Deahl v. Winchester Dept. Soc. Serv.*, 224 Va. 664, 672-73, 299 S.E.2d 863, 867 (1983). On appeal, the judge's decision in the matter will not be reversed absent a showing that the judge abused his discretion. *Stockton v. Commonwealth*, 227 Va. 124, 141, 314 S.E.2d 371, 382, *cert. denied*, 469 U.S. 873, 105 S.Ct. 229, 83 L.Ed.2d 158 (1984). In the circumstances of this case, we cannot say the judge abused his discretion. Indeed, the record suggests that he properly denied the recusal motion.

The judge made clear his opinion that the events involving his father had no effect upon his ability to remain impartial in the case. The judge characterized the election contest as being "exactly the type of peaceful action that [the] Union and all members of our society ought to take advantage of." The judge further opined that he much would prefer that "any particular politician be ousted from office, *including any relative of* [*his*], than to have one more rock thrown at another person whereby [that person's] safety is put in peril." (Emphasis added.) The judge also correctly noted that the critical decisions were made by him long before the recusal motion was filed.

Therefore, we reject the Union's contention. In doing so, we conclude that a fair reading of the record clearly shows that the trial judge demonstrated a high degree of fairness, patience, and even-handedness in presiding over this complex and protracted case.

VII

In conclusion, we hold that (1) the Court of Appeals erred in refusing to allow Bagwell to intervene; (2) the fines in question are valid, coercive, civil contempt fines imposed pursuant to an established, prospective fine schedule; (3) the subject fines were not mooted by the parties' settlement of the underlying strike and litigation; (4) the fines are not excessive in violation of substantive due process or federal labor policy; and (5) the trial judge did not err in refusing to recuse himself.

Accordingly, we will allow Bagwell to intervene as a party, we will reverse the Court of Appeals' judgment and enter final judgment in favor of Bagwell in Record No. 910634, and we will affirm the trial court's judgment in Record No. 920299.

Record No. 910634: *Reversed and final judgment.*

Record No. 920299: *Affirmed.*

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 6th day of March, 1992.

Record No. 920299

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*,
Appellants,

against

CLINCHFIELD COAL COMPANY, *et al.*,
Appellees.

From the Circuit Court of Russell County

It appears that appeals have been filed with the Court of Appeals of Virginia in Record Nos. 1953-89-3 and 1508-90-3 through 1513-90-3, that the matters have not been determined by said court, and that the cases are of such imperative importance as to justify the deviation from normal appellate practice and to require prompt decision in the Supreme Court.

Upon consideration whereof, this Court, acting on its own motion at the suggestion of Special Commissioner John L. Bagwell, certifies these cases for review pursuant to the provisions of Code § 17-116.06(A) and (B)(1), and consolidates them with Record No. 910634.

This order shall constitute certification pursuant to Rule 5:23 that an appeal has been awarded.

A Copy,

Teste:

/s/ David B. Beach
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 5th day of March, 1992.

Record No. 910634

Court of Appeals Nos. 0790-89-3, 0904-89-3, 1287-89-3, 1333-89-3, 1629-89-3 and 1743-89-3

JOHN L. BAGWELL, Special Commissioner,
Appellant,

against

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA AND INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, DISTRICT 28,
Appellees.

From the Court of Appeals of Virginia

Upon the petition of John L. Bagwell, Special Commissioner, an appeal is awarded him from a judgment rendered by the Court of Appeals of Virginia on the 26th day of March, 1991; upon the petitioner, or some one for him, filing an appeal bond with sufficient security or an irrevocable letter of credit in the clerk's office of the Circuit Court of Russell County in the penalty of $500, within 15 days from the date of the Certificate of Appeal, with condition as the law directs.

In addition to the assignments of error, the parties shall brief and argue the matters raised in the appellees' motion to dismiss.

Justice Keenan and Senior Justice Poff took no part in the consideration of this case.

A Copy,

Teste:

/s/ David B. Beach
Clerk

CERTIFICATE OF APPEAL

Pursuant to Rule 5:23, I, David B. Beach, Clerk of the Supreme Court of Virginia, do hereby certify that on March 5, 1992 an appeal was awarded as described in the order to which this certificate is appended. A copy of this certificate and a copy of the order to which it is appended were this day mailed to the lower court indicated in the order and to all counsel of record.

Given under my hand this 6th day of March, 1992.

/s/ David B. Beach
Clerk

COURT OF APPEALS OF VIRGINIA

Record Nos. 0790-89-3, 0904-89-3,
1287-89-3, 1333-89-3, 1629-89-3
and 1743-89-3

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*

v.

CLINCHFIELD COAL COMPANY, *et al.*

March 26, 1991

Present: KOONTZ, C.J., and BAKER and COLE, JJ.

KOONTZ, Chief Judge.

This appeal arises from a series of contempt judgments and corresponding fines exceeding twenty million dollars entered by the Circuit Court of Russell County against the International Union and the Local District 28 Union of the United Mine Workers of America (Unions), appellants, at the request of Clinchfield Coal Company and Sea "B" Mining Company (Companies), appellees. For the reasons that follow, we vacate the fines imposed by the circuit court.

I. Factual Background

The record in this case is voluminous. We summarize only the essential facts for purposes of this opinion.

On April 4, 1989, the unions commenced a strike against the Companies in protest of alleged unlawful labor practices by the Companies. In response, on April 12, 1989, the Companies filed a bill of complaint in the circuit court alleging that the Unions and others acting in concert with them were violating Virginia's right to work law. The Companies sought an injunction to prohibit that conduct. On April 13, 1989, the circuit court issued an injunction and established picketing guidelines and prohibited certain strike-related activities, such as the use of tire puncturing devices. As the strike continued, the circuit court modified the injunction in an effort to prevent violations of the Companies' rights and Virginia's right to work law.

Notwithstanding the injunction, numerous acts involving violence and non-violence, which can only be described fairly as massive, were reported that were in violation of the injunction. As a result, the circuit court entered rules to show cause against the Unions. At the first show cause hearing, held on May 16, 1989, the court found there had been seventy-two separate violations of the injunction. Based on its findings in the May 16 hearing and without indicating the standard of proof being applied, the court by order entered on May 18 found the Unions in contempt and imposed fines on them totalling $616,000. The court suspended $400,000 of these fines conditioned on the Unions' paying the unsuspended portion within ten days and thereafter complying with the injunction. The fines were directed to be paid to the Commonwealth. The court also set a prospective fine schedule for future injunction violations whereby peaceful violations would result in $20,000 "civil" fines and violent violations would result in $100,000 "civil" fines.

A second contempt hearing was held on June 2, 1989, from which the court entered a second order adjudicating the Unions in contempt. Based on its findings that the Unions had continued to violate the injunction and in accordance with its previously set fine schedule, the court reinstated the suspended fines from its May 18 order and fined the Unions a total of $2,465,000, payable to the Commonwealth. In its order, the court stated that "the evidence proves beyond a reasonable doubt that [the Unions] have intentionally violated" the injunction. However, the court also declared, "[i]t is the court's intention that these fines are civil and coercive." In the same order, the court set forth a new fine schedule "for the purpose of coercing the defendants to comply with the court's injunctions."

On July 27, 1989, the court entered a third contempt order wherein the court found that the Unions repeatedly violated the injunction through violent and non-violent acts, including the failure to use all lawful means to ensure compliance. During the hearing upon which this order was entered, the court again declared the standard of proof applied to the evidence was "beyond a reasonable doubt," but explained that it was doing so "out of an abundance of caution." Without adhering to its new fine schedule, the court imposed on the Unions fines totalling $4,465,000, payable to the Commonwealth, Russell County, and Dickenson County. Subsequently, in a hearing held on August 16, 1989, the court informed the Unions that they had no right to a jury trial because they were not being tried for criminal contempt and that "these were civil proceedings."

On August 29, 1989, the Companies filed their seventh motion for rule to show cause, which moved the court for a rule to show cause why the Unions should not be held in civil or criminal contempt and for "such other relief as the court deems appropriate." After issuing a rule to show cause and holding a hearing for the rule, the court entered a fourth contempt order in which it found beyond a reasonable doubt that the Unions had continued to violate the injunction. The court imposed on the Unions fines totalling $16.9 million, of which

$13.5 million were made payable to the Commonwealth, Russell County, and Dickenson County. The remaining $3.4 million were directed to be paid to the Companies, even though the Companies did not present any evidence of pecuniary losses to the court.

In a fifth contempt order entered on Ocotber 9, 1989, the court found the Unions guilty beyond a reasonable doubt of 71 violations of the injunction and fined them $6.9 million, payable to the Commonwealth, Russell County, and Dickenson County. Once again, the court apparently imposed the fines without considering any evidence of pecuniary losses. In a hearing held on the same day, the court reiterated its position that the proceedings were civil rather than criminal, and that it was using monetary means to coerce the Unions into compliance with the injunction.

II. Procedural Background

Following the Unions' timely appeal to this Court, the Unions filed their initial brief aserting, in addition to numerous other issues, that the fines in question were criminal sanctions imposed in a civil proceeding and in violation of certain constitutional guarantees. In response, the Companies on brief asserted that the fines were coercive civil fines and were properly imposed. Prior to oral argument in this Court in support of their positions on brief, the parties settled the underlying strike and this litigation. By joint motion dated January 29, 1990, the parties moved the circuit court for entry of an order contemplating dissolution of the pending injunctions, vacation of all fines, including those at issue in this appeal, and dismissal of the litigation.

Thereafter, in accordance with the agreement with the Unions, the Companies filed in this Court a Statement of Position In Lieu of Brief and Motion to Withdraw. The Companies therein acknowledged the settlement of the strike and the litigation, supported the vacation of the

fines, and because they "[could] no longer function as an adversary in this appeal" requested that they be dismissed as parties to this appeal. The Unions filed their reply brief in which, without abandoning their original position that the fines were criminal sanctions, they asserted that based on the parties' settlement this appeal should be dismissed as moot, with directions that the fines involved in this appeal be vacated, as contemplated by the parties' agreement.[1]

Oral argument was held in this Court on October 9, 1990. The Companies took no part in this hearing. Thereafter, and before a decision was reached in this Court, John L. Bagwell, Special Commissioner previously appointed by the circuit court to collect the fines imposed against the Unions, petitioned this Court to be made a party in these proceedings or in the alternative to be permitted to file a brief *amicus curiae*. We denied the request of Bagwell to be made a party, but permitted the filing of the *amicus curiae* brief. The Unions timely filed a reply brief.

III. The Issues

Initially, we were called upon to decide whether the fines involved in this appeal were criminal or civil sanctions for violation of the circuit court's injunction. The distinction between criminal and civil contempt sanctions has been the subject matter of many opinions from various state and federal courts and is a matter involving the difficult application of well settled rules. We draw this distinction and apply these rules in *International Union, United Mine Workers of America v. Covenant Coal,* —— Va.App. ——, 402 S.E.2d 906 (1991), decided this date, which involves litigation arising from the same

[1] On brief it is now acknowledged that the trial court has denied the joint request to vacate the fines payable to the Commonwealth and Russell and Dickenson County. The fines payable to the Companies have been vacated. We accept this acknowledgement only for the purpose of clarity in the procedural background of this case.

labor dispute involved in this appeal. However, in this apeal it is not necessary, or appropriate, for us to determine whether the fines in question are criminal or civil because the result would be the same under the view we adopt. If determined to be criminal fines improperly imposed in a civil proceeding without the necessary constitutional protections, the fines could not stand. *United Steelworkers v. Newport News Shipbuilding*, 220 Va. 547, 260 S.E.2d 222 (1979). Accordingly, for purposes of our decision here, we assume, without deciding, these fines are civil sanctions. The dispositive issue then becomes whether the settlement of the dispute and litigation between the parties requires that the civil fines imposed as a part of the injunction suit must be set aside. We turn now to address that issue.

IV. Discussion

The *amicus* brief brings this issue into focus. First, it is asserted, and we agree, that civil contempt sanctions may be subdivided into two sub-categories. Compensatory civil contempt sanctions, as the name suggests, compensate the plaintiff for losses sustained because of the defendant's non-compliance or disobedience of a court's order. Coercive civil contempt sanctions, again as the name suggests, are imposed to coerce a defendant into complying with the orders of a court. *See generally United States v. United Mine Workers*, 330 U.S. 258, 67 S.Ct. 677, 91 L.Ed. 884 (1947); *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 31 S.Ct. 492, 55 L.Ed. 797 (1911). In *Latrobe Steel Co. v. United Steelworkers*, 545 F.2d 1336 (3d Cir.1976), the Court in addressing these sub-categories made the following helpful observations:

> [C]ompensatory actions are essentially backward looking, seeking to compensate the complainant through the payment of money for damages caused by past acts of disobedience. Coercive sanctions, in contrast, look to the future and are designed to aid the plaintiff by bringing a defiant party into compliance with the court order or by assuring that a potentially contumacious party adheres to an injunction by *setting forth in advance the penalties the court will impose if the party deviates from the path of obedience* . . . .
>
> [T]he court may levy a fine of a specified amount for past refusal to conform to the injunction, *conditioned, however, on the defendant's continued failure to obey.* The court may also specify that a disobedient party will be fined a certain amount for each day of non-compliance. Indeed, the methods that may be employed to coerce a recalcitrant party into compliance with an injunction are many and varied.

Id. at 1344 (emphasis added) (footnotes omitted).

With the exception of the initial unsuspended fines, the circuit court clearly imposed the type of coercive, conditional fines recognized in *Latrobe*. For purposes of distinguishing between compensatory and coercive civil sanctions, we need not consider the unsuspended fines which have obvious indications of criminal sanctions for past violations of the court's order. Nor need we consider the fact that the court did not adhere to its previously set fine schedule in the third contempt order for the purpose of drawing a distinction between compensatory and coercive civil fines. The Companies presented no evidence of losses resulting from the Union's disobedience of the court's injunctive order. Without such evidence, the circuit court could not and did not seek to impose compenstaory fines. Moreover, the voluminous record in this case makes it clear that the court imposed the fines in question to coerce compliance with its orders rather than to compensate the Companies. A review of the facts in the record which reflect the magnitude of the violations involved and the

resulting impact on the operations of the Companies, as well as the communities at large persuade us, as apparently they persuaded the circuit court, that fines of considerable magnitude were reasonably required to coerce compliance from the Unions. Consequently, we conclude that these fines were coercive civil fines, not compensatory civil fines.

The distinction between the two sub-categories of civil sanctions for contempt is relevant to the disposition of the ultimate issue in this appeal. Neither the parties nor *amicus curiae* dispute that compensatory fines should be vacated upon the settlement of the litigation between the parties. What is disputed is whether coercive civil fines should also be vacated or left to the discreton of the trial court to be vacated in whole or in part.

The Unions contend that all civil contempt sanctions, whether compensatory or coercive, imposed during the prior proceedings must be vacated when the litigation in which they were imposed is settled by the parties. The Unions rely primarily on the seminal case of *Gompers* for this position. The *amicus* brief asserts that coercive civil contempt fines have the dual purpose of coercing compliance with the court's orders and of vindicating the court's authority. This latter purpose forms the basis for the further assertion that the trial court has the discretion to refuse to vacate or to modify the amount of the sanctions if the court determines that maintaining the fines would vindicate the authority of the court even where, as here, the parties jointly move to vacate or to modify the sanctions. While recognizing that in the context of vindicating the authority of the court such civil fines are similar to criminal fines, which survive the settlement of the underlying litigation, the *amicus* brief asserts that the civil nature of the contempt is not turned criminal by the court's efforts at self-vindication. *See United States v. Wendy*, 575 F.2d 1025, 1029, n. 13 (2d Cir. 1978).

In support of the assertion that *Gompers* does not mandate that all civil contempt fines, whether compensatory or coercive, be vacated upon the settlement of the underlying civil litigation, the *amicus* brief cites us to the recent decision of *Clark v. International Union, United Mine Workers*, 752 F.Supp. 1291 (W.D.Va. 1990), which arose from the same labor dispute involved in the present appeal. In *Clark*, after determining that the prospective fines imposed upon the unions were civil, coercive fines, the court refused to vacate these fines upon the settlement of the underlying labor dispute and civil litigation. The district court determined that *Gompers* does not apply to civil contempt fines imposed in a *completed* proceeding prior to settlement of the underlying dispute. Apparently, in its view, the holding in *Gompers* only establishes that in cases in which a court imposes criminal sanctions followed by settlement of the underlying dispute, no remand for civil contempt proceedings may take place in connection with the case.

United States v. Wear Corp., 602 F.2d 110 (6th Cir. 1979), is primarily relied upon by the district court for this position. In *Work Wear*, the Anti-Trust Division of the Justice Department brought a suit against Work Wear which led to a settlement that required Work Wear to divest itself of certain subsidiaries. When this did not occur within the deadline specified in the Court's order, the government obtained civil contempt fines against Work Wear for each day the divestiture did not occur beyond the deadline. Eventually, these fines amounted to over one million dollars. The parties ultimately agreed to a reduction of approximately one-half of these fines but the Court refused to follow this agreement. Upon appeal, the Sixth Circuit upheld that refusal on the basis that the lower court had not abused its discretion in refusing to reduce the fines. Mootness of the fines was not discussed. The *Clark* Court found, nevertheless, that by implication *Work Wear* stands for the proposition that

cessation of the contemptuous act does not moot the obligation to pay coercive contempt fines imposed before the end of the contemptuous conduct.

In response, the Unions assert that *Clark, Work Wear* and the other cases relied on in *Clark* are distinguishable on several grounds. First, the Unions assert that in *Work Wear* the underlying dispute was not *totally* settled. In addition, the Unions assert that these cases can be distinguished on the ground that they were brought by governmental agencies to vindicate public rights and in such cases the courts should review a settlement to ensure that it protects those too numerous and ill-informed to protect their own interests. In contrast, the present case involves only private parties to civil litigation which has been fully settled.

We need not address the merit of these distinctions. The *Clark* Court expresses an eloquent rationale in support of its determination that the Unions' mootness argument would undermine the efficacy of civil contempt sanctions and a court's power to enforce its orders by the use of such sanctions. We do not disagree with the sentiment inherent in the *Clark* Court's rationale.

We believe, however, that while we must follow federal law in our determination of whether a particular contempt sanction is criminal or civil for purposes of determining the proper application of federal consttiutional protections, *Hicks v. Feiock,* 485 U.S. 624, 630, 108 S.Ct. 1423, 1428, 99 L.Ed.2d 721 (1988), the issue whether civil contempt sanctions are mooted by subsequent settlements by the private parties to the litigation is a matter of state law. While our Supreme Court has not had the opportunity to address this particular issue, we believe *Local 333B, United Marine Division v. Commonwealth,* 193 Va. 773, 71 S.E.2d 159, *cert. denied,* 344 U.S. 893, 73 S.Ct. 212, 97 L.Ed. 690 (1952) and *United Steelworkers v. Newport News Shipbuilding,* 220

Va. 547, 260 S.E.2d 222 (1979) indicate that our courts should rigidly adhere to procedures that maintain the distinction between civil and criminal contempt and that the maintenance of this distinction includes the consequences that follow when private parties settle all issues following the imposition of civil contempt sanctions, whether characterized as compensatory or coercive fines. In adopting this view, we believe the authority of the court will be well defined, the rights of the parties will be protected, and the power to vindicate the authority of the courts will be maintained in an orderly fashion.

In *Local 333B,* the Court approved the procedure of transferring a criminal contempt proceeding from the equity side to the law side of the court and of changing the style of the case to reflect that the Commonwealth had intervened as a party plaintiff to prosecute the Union for criminal contempt. This approach is consistent with the well recognized principle that criminal contempt is a matter between the government and the contemnor and the sentence imposed is punitive and in the public interest since it is imposed to vindicate the authority of the court and to deter by way of example others who would violate court orders. In *Steelworkers,* the Court prohibited the impostion of criminal sanctions in a civil proceeding and denied a request for a subsequent proceeding to secure compensatory civil sanctions for the plaintiff. Implicit in these holdings, in our view, is the requirement that our courts should follow procedures designed to inform the parties of the true nature of the proceedings, while preserving the power of the courts to vindicate their authority. The view which we adopt is also consistent with principles we glean from the United States Supreme Court cases.

> In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and

> punishments on a contemnor, it is not only vindicating its legal authority to enter the initial court order, but it is also seeking to give effect to the law's purpose of modifying the contemnor's behavior to conform to the terms required in the order.

Hicks, 485 U.S. at 635, 108 S.Ct. at 1431.

In the present case, the coercive civil fines were intended to coerce the Unions into compliance with the court's injunctive order for the benefit of the Companies. These fines also necessarily had the incidental purpose and effect of vindicating the authority of the court. In this respect, all coercive civil contempt sanctions vindicate to some degree the authority of the court. In our view, however, the mere fact that a civil sanction imposed to coerce compliance also vindicates a court's authority, does not require that we maintain discretion in the court to refuse to vacate such sanctions upon settlement of the underlying dispute and litigation between the private parties. Vindication of the court's authority, the acknowledged purpose of criminal contempt sanctions, remains available by criminal contempt proceedings conducted with appropriate constitutional protections for the contemnor. "When the main case is settled, every proceeding which was dependent on it, or a part of it, was also necessarily settled, of course, without prejudice to the power and right of the court to punish for contempt by proper proceedings." *Gompers*, 221 U.S. at 451, 31 S.Ct. at 502.

In summary, while we recognize the magnitude of the violations of the trial court's order in this case and the justifiable concern the court had with compliance with its order, we hold that civil contempt fines imposed during or as a part of a civil proceeding between private parties are settled when the underlying litigation is settled by the parties and the court is without discretion to refuse to vacate such fines. This result follows even

though such fines may serve the incidental purpose of vindicating the court's authority. The court's authority in such cases may be vindicated in subsequent criminal proceedings between the Commonwealth and the contemnor conducted with appropriate constitutional protections afforded to the contemnor.

Accordingly, the fines now pending in this appeal are moot and we remand this case to the trial court with directions to vacate these fines in accordance with this opinion.

Remanded.

BAKER, Judge, dissenting.

I respectfully disagree with the finding of the majority in this case and would affirm the judgment of the trial court.

VIRGINIA:

In the Court of Appeals of Virginia on Thursday the 6th day of December, 1990.

Record Nos. 0790-89-3, 0904-89-3, 1287-89-3, 1333-89-3, 1629-89-3 and 1743-89-3

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Appellants,

against

CLINCHFIELD COAL COMPANY, *et al.*,
Appellees.

From the Circuit Court of Russell County

On consideration of the motion of John L. Bagwell, Special Commissioner, to intervene or appear *amicus curiae*, the appellants' opposition, and the reply thereto, the motion to intervene and to appear by counsel and argue before this Court is denied. Leave is granted the said John L. Bagwell, by counsel, to file a brief *amicus curiae* in support of his legal position within fifteen days of this date. Reply briefs may be filed within ten days thereafter. Oral argument will not be permitted.

A Copy,

Teste:

Clerk

COMMONWEALTH OF VIRGINIA

[SEAL]

TWENTY-NINTH JUDICIAL CIRCUIT
Counties of Buchanan, Dickenson, Russell and Tazewell

August 22, 1990

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Re: Clinchfield Coal Company, et al v. International Union, United Mine Workers of America, et al
Chancery No. 12486

Gentlemen:

This matter is before the Court upon the defendants' motion to set aside the December 15, 1989, orders previously entered by this Court, upon the parties' joint motion for "Order Re Dismissal", and upon the several representations of counsel and memoranda filed in support

of the parties' positions herein. The Court should note also that two memoranda have been filed by the Center on National Labor Policy Inc., as *amicus curiae*, in opposition to the plaintiffs' and defendants' joint motion.

On December 15, 1989, this Court entered three orders, one liquidating prospective fines under its sixth contempt order, and two others adjudicating the defendant in contempt and liquidating portions of the prospective fines which had been previously announced on May 16 and June 2, 1989. On January 5, 1990, at 11:30 a.m., the defendants filed a motion to set aside these three orders as being contrary to the law and the evidence along with a motion to postpone the hearing on the motion to set aside. At this time the parties announced a tenative settlement of the strike "underlying this action". The Court entered its order that day temporarily suspending the three orders of December 15, in order to provide the defendant more time to fully present its arguments and the Court more time to consider the motion to set aside and any other motions the parties might file thereafter.

After having considered the argument of counsel and the authorities submitted, it is the opinion of this Court that the defendants' motion to set aside the orders entered December 15, 1989, must be denied.

The evidence presented by the plaintiffs as to each of the allegations of contemptuous behavior proves without question that the International U.M.W.A. was the author of these actions. The fact that some of the evidence as to the defendants' complicity was circumstantial makes it no less competent or convincing.

Nor can the defendants' protestations that these proceedings were criminal contempt hearings change the fact that they were civil in nature. The Court early on announced its purpose in imposing prospective civil fines the payment of which would only be required if it were shown the defendants disobeyed the Court's orders. That purpose was to compel compliance with the Court's orders which were entered to protect the rights of the plaintiffs and the public. The fines were conditional and it was within the defendants' sole power to avoid payment of the fines.

The Supreme Court of the United States in *United States v. United Mine Workers of America*, 330 U.S. 258, 304-305, 67 S.CT. 677, 701 (1947) has specifically sanctioned the imposition of monetary fines payable to the Court to compel a recalcitrant defendant (the same defendant as in this case) to discontinue a strike it had called. The United States Court of Appeals for the Second Circuit has likewise found that the imposition of fines *"in terrorem"* is authorized as a means of securing future compliance with a decree. *Sunbeam Corp. v. Golden Rule Appliance, Co., Inc.*, 252 Fed. 467, (1958). In that case the defendant was ordered to pay a competitor a $2,500.00 fine for every future sale of the competitor's product in violation of a consent decree. The fine there, as here, was imposed only conditionally and depended upon the contemnor's future conduct. The contempt sanctions imposed by this Court were civil in nature, not criminal. Thus, defendant had no right to trial by a jury or to a public prosecutor.

Defendants complained of the Court's appointment of counsel for plaintiff as Special Commissioners to collect the fines imposed. This issue is now moot as Mssrs. Hodges and Massie have been relieved of those duties.

The remaining grounds assigned by defendants in its motion to set aside are without merit and the Court overrules the motion. The Court would comemnt, though, that the interpretation of the evidence with regard to the existence of "roving pickets" and the understanding of the bases of the Court's findings argued by defendants' counsel belie their intelligence and are tributes to their inventiveness. This Court in its earlier orders specified the sites where picketing would be authorized along with the number of pickets allowed at each site. The

evidence presented at all of the hearings showed a constant pattern of pickets locating themselves at various unauthorized places from which they would move to another picket site when police or others attempted to investigate incidents. The evidence of moving or roving picketing was overwhelming.

The parties filed a joint motion for "Order Re Dismissal" on January 24, 1990, when they again represented to the Court that they had come upon a tentative settlement of the strike, and asked the Court to rule immediately on this motion even though the proposed agrement had to be submitted to the U.M.W.A. members for a ratification vote—something which had not even been scheduled at that time. The Court conducted two hearings during which it was shown a written agreement entered into by the parties purportedly resolving the many cases in litigation spawned by the strike. At the parties' request the Court viewed *in camera* a supplemental agreement between them containing portions of their pact which the International Union desired not be made public. Certain "submissions" were made by the defendant in which it proposed to have its membership perform community service work in order to purge itself of contempt. On February 12, 1990, the Court ruled from the bench that it would not, upon the evidence, the representations and the argument presented to that data vacate its orders imposing the civil fines merely because the parties agreed it should do so. Thereafter, an additional "submission" was filed by the defendant, increasing the number of hours of community service proposed, together with several additional memoranda by Clinchfield, the U.M.W.A. and the Center on National Labor Policy, Inc. (as *amicus curiae*). Subsequently there was also proposed to the Court a hearing at which the top leadership and management of the parties would appear to discuss various issues with the Court. The Court was of course available for such a hearing, but none was ever scheduled even though several weeks passed

after the proposal was made. It appearing that nothing further will be forthcoming on these issues, the Court considers them ripe for adjudication.

The parties have requested dismissal of this lawsuit and dissolution of the injunctions entered. There is no question that upon reaching a settlement of their disputes these litigants are entitled to have such requests granted. The Court will, therefore, enter an order dismissing plaintiffs' Bill of Complaint for injunctive relief and dissolving all injunctions insofar as they grant relief to the plaintiffs.

The parties have also requested vacation of all orders imposing fines for contempt, including not only those entered December 15, 1989, but also judgments entered more than twenty-one days prior to the filing of the motion. Virginia Supreme Court Rule 1:1 provides that "All final judgments, orders and decrees, . . . shall remain under the control of the trial court for twenty-one days after the dates of entry, *and no longer.*" (Emphasis supplied). Defendants have noted appeals of the orders entered before December 15, 1989, and they are now before the Court of Appeals of Virginia. Having taken the position that these orders are final and therefore ripe for appeal (a position with which this Court agrees), the defendants cannot now argue to the contrary. These orders are beyond the reach of this Court and shall remain undisturbed.

Turning to the December 15 orders now, the Court is told that because this is a civil suit, the litigants are entitled, upon announcing a settlement of their disputes, to have the contempt proceedings dismissed and all fines previously liquidated vacated. The Court is cognizant of the principles of law upon which the argument is founded but disagrees with the contention that they require in this case the action requested of the Court.

The underlying action upon which these civil contempt proceedings are dependent is, of course, plaintiffs' suit for

injunctive relief, the purpose of which was to obtain the preventive power of a Court of Equity 1) to protect the company from the power of a large labor union unlawfully used against it, and 2, to protect its employees, servants, contractors, their families and members of the general public from defendants' unlawful acts. Clinchfield sought government intervention to prevent the obstruction of private and public rights of ways; the intimidation and coercion of any persons entering or leaving plaintiffs' worksites; the threatening and assaulting of persons; the throwing of rocks and other missiles at vehicles or persons; the placing of devices designed to puncture tires of automotive traffic on private and public roads; the obstruction of the vision of those operating motor vehicles; the following or trailing of company employees and their families, and so on. The Court granted much of the relief requested finding defendants were interfering with the rights of the plaintiffs *and* those of the general public.

Moreover, with the passage of time defendants' strategy for conducting the strike shifted from acts affecting primarily the company to acts affecting both those members of the public associated with the company and those who had no connection with any of the litigants. The focus and loci of defendants' unlawful conduct shifted from company property and facilities to the public highways and private homes and businesses. So, as the strike proceeded, the protection sought from and granted by the Court was more and more for the general public. Concomitant action by the executive branch of this Commonwealth's government brought scores of Virginia State Police officers, Department of Transportation workers, etc., and millions of dollars worth of equipment to the task of protecting the rights of not only the litigants, but the general public as well. Thus, when the Court found it necessary to liquidate the prospective fines imposed, and when defendant strenuously objected to awarding them to Clinchfield, the bulk of the fines were made payable to

the Commonwealth and the two counties most heavily affected by the unlawful activity. From its institution, and more as it proceeded, this case has involved the protection of the rights of the general public in addition to those of the plaintiffs. In *Gompers v. Buck Stove & Range Co.* 221 U.S. 418 (1911), the United States Supreme Court employed an analysis of the purpose of a suit and the relief awarded in determining whether litigants are entitled to a dismissal of contempt proceedings. Although in that case the Court ruled in favor of the requested dismissal, analysis of the purpose of this suit and the nature of the relief awarded shows there are substantial differences in the facts there and here, differences so significant as to compel an opposite result.

Additionally, the motion for "Order Re Dismissal" was not made until January 24, 1990, 19 days after the Court agreed to suspend the operation of its December 15, 1990 orders concerning contempt. Even at that time their request was not to dismiss the cause, but to enter an order stating the Court's *intention* to dismiss it upon the ratification of the then tentative labor contract and cessation of the strike. The Court's rulings finding the defendant guilty of several counts of contempt, liquidating numerous fines and apportioning them among the plaintiff, Dickenson and Russell Counties and the Commonwealth were announced from the bench December 8, 1989, and reduced to written form by the orders entered December 15, 1989. The effects of these rulings were suspended by order entered January 5, 1990, to allow the Court time to consider defendants' motion to set aside. The request for vacation of the contempt fines came too late.

What is more, the parties announced only *tentative settlement* of their dispute. Even the language of the proposed order was conditional, only to be given effect should the proposed labor contract be ratified by the U.M.W.A. membership. Defendants even argued that the Court's entry of the proposed order was a condition pre-

requisite to the submission of the contract proposal to its membership. Although the Court is aware that the proposal was indeed ratified by the unions' membership in February, 1990, and the Court assumed that the strike and picketing against plaintiffs has indeed ceased, the Court feels strongly that the parties attempted by these motions to set aside and to dismiss and vacate to manipulate the Court's decision making process and the orderly disposition of these matters. Basically, the parties attempted to extort the desired ruling from the Court by making it appear final settlement of this bitter, violent labor dispute was contingent upon that favorable ruling. The parties did not act in good faith.

Although the law favors the resolution of disputes by compromise and settlement rather than by litigation, *Bangor Punta Operations, Inc. v. Atlantic Leasing Ltd.*, 215 Va. 180, 207 S.E.2d 858, the reason for this rule is instructive. Settlement is less expensive and less time consuming. It saves time, effort and expense of the parties, the attorneys and the courts. Compromise and settlement is said to be conducive to more amicable relations between the parties. (*15 Am. Jur. 2d, Compromise and Settlement*, Section 6). Here, no time can be saved nor expense avoided. The parties' time, effort and money have already been expended; nor will the attorneys' or Court's time be saved—it has already been consumed; nor will future relations of the parties be affected when both parties have joined in the motion to dismiss/vacate and done their utmost to obtain a favorable ruling.

Here, the parties rested their cases, submitted the issues to the Court, and the Court ruled and entered its orders. In effect the original parties came upon a settlement of their differences after judgment. Had the rulings been such that Clinchfield was the sole beneficiary of the judgments of the Court, it would be simple enough for the parties to effect their object. The judgments, however, made the Commonwealth and two of its political subdivisions recipients of portions of the liquidated fines.

Due to the nature of defendants' unlawful conduct, the nature of the relief requested by Clinchfield, and the protection the Court granted, the public, the citizens of this Commonwealth, were necessarily intimately affected and were the intended beneficaries of the suit and the relief granted. There is a decisive difference between such a case and one involving only the litigants or one in which the Court-ordered protection is focused solely on the litigiants. The Supreme Court of the United States has recognized that the payment of fines to the Court is proper remedial relief when payment can be avoided by compliance with the Court's order. *Hicks v. Feioks*, 485 U.S. 624, 99 L. Ed. 2d 721 (1988). Certainly the same is true of fines the Court makes payable to other branches of the government. Where, as here, the public's welfare is so intimately involved and the Court has granted civil contempt relief payable in effect to the public, and where judgment has been announced and entered, the public's interest must be considered. There can be no "settlement" without the consent of at least all those whom the relief granted is intended to benefit. No such consent is present in this case. Neither the Commonwealth, nor the two counties, nor the Court has agreed to the vacation of these fines.

The Court must also take into consideration the fact that the defendants have made no meaningful effort to purge their contempt. The offer to have its members perform a paltry 10,000 or even 20,000 hours of community service to atone for the repeated, massive, violent violations of this Court's orders is an affront to our system of law and to the Court. Likewise, if ever a party has come to the bar seeking equity with unclean hands, the defendants in the case have. Not only have they violated the injunctions put down to protect the plaintiffs and the public, but they have refused to abide by the Court's judgments, e.g.: directing payment of fines and service of the orders upon its membership. The

International, U.M.W.A. remains defiant and deserves no relief.

This Court's judgments will be given effect to the extent that consent to vacate them is lacking. As the plaintiffs have indicated their consent, and since they can easily have any judgment in their favor marked "satisfied" by the Clerk, so much of the fines as were directed payable to Clinchfield shall be vacated. The remainder shall be paid by the defendants with interest from December 15, 1989. The suspension of those portions of all orders adjudicating contempt, liquidating fines against the defendants, and directing the method and time of payment of the fines shall be terminated and they shall remain intact and in effect. All fines liquidated by the orders entered December 15, 1989, shall be payable to the recipients through the Clerk of this Court no later than 10 days after the entry of the order commemorating the rulings herein.

The Court will appoint John L. Bagwell, Esquire, of Grundy, Virginia, to act in the place and stead of the Commonwealth's Attorneys of Russell and Dickenson Counties, who have both asked to be disqualified in all these cases, and to act as Special Commissioner in Chancery for the purpose of collecting any unpaid fines due and payable to those political subdivisions and the Commonwealth at a fee to be approved by the Court. The Court shall further direct Mr. Bagwell to take all actions necessary to immediately begin collection of any fines remaining unpaid after the date specified above and to report to the Court his efforts and the results of those efforts at collection.

In its comments from the bench in response to the motions disposed of by the rulings in this opinion, the Court expressed its concern over the need to establish and protect the rule of law and the authority and power of courts to enforce the law. The conduct of the defendants throughout the history of this litigation has certainly

given rise to grave concerns over whether they will be governed by the law and the institutions created by to administer the law, or whether they will be permitted to operate outside the rules of society establishes for the conduct of affairs amongst its members. Because the judgments heretofore entered are civil in nature, and because the contempt proceedings previously had were for the purpose of persuading the defendants to stop violating the rights of plaintiffs and the citizens of these communities, and because there is evidence before the Court that the defendants have violated several of this Court's orders, and because it is imperative that if the defendants have knowingly violated these orders, they must be made to realize the consequences thereof, the Court is of the opinion that criminal contempt proceedings must be instituted to determine whether the defendants or its members have been guilty of knowingly violating these orders.

Mr. Hodges is directed to prepare at the very earliest date practicable an appropriate order in accordance with the rulings herein for endorsement by counsel and entry by the Court.

Very truly yours,

/s/ Donald A. McGlothlin, Jr.
DONALD A. MCGLOTHLIN, JR.
Judge

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

IN CHANCERY NO. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

ORDER

The Court has before it for decision defendant International's Motion to Set Aside Order of December 15, 1989 as Being Contrary to the Law and Evidence and the parties' Joint Motion for Order Re Dismissal.

Upon consideration of all arguments and authorities submitted, and for the reasons set forth in the Court's letter to counsel dated August 22, 1990, it is ADJUDGED and ORDERED as follows:

1. The Motion to Set Aside Order of December 15, 1989, as Being Contrary to the Law and Evidence is denied.

2. The Orders of June 7, 1989 (Second Contempt Order), July 27, 1989 (Third Contempt Order), September 21, 1989 (Fourth Contempt Order), and October 9, 1989 (Fifth Contempt Order) are beyond the reach of the Court and shall remain undisturbed.

3. Plaintiffs' Amended Bill of Complaint is dismissed and the Injunction of April 13, 1989, and Amended Injunction of April 21, 1989, are dissolved insofar as they grant relief to plaintiffs.

4. Those portions of the fines liquidated in the Court's three Orders entered December 15, 1989 (Order Liquidating Fines under Sixth Contempt Order and the Seventh and Eighth Contempt Orders) which are payable to the plaintiffs, totalling $6,400,000, are hereby vacated. These Orders shall otherwise remain intact and in effect and their suspension is hereby terminated. Such remaining fines, with interest from December 15, 1989, shall be paid to the Clerk of this Court within ten days after the date of entry of this Order.

5. Except as stated in paragraphs 3 and 4 above, the Joint Motion Re Dismissal is denied.

6. John L. Bagwell is hereby appointed special commissioner in the place and stead of the former special commissioners and as attorney to act in the place and stead of the Commonwealth's Attorneys for Russell and Dickenson Counties to collect all unpaid and unbonded fines. Wade W. Massie and Stephen M. Hodges, the special commissioners previously appointed by this Court, shall prepare and provide to all parties and to this Court a complete and accurate report of the accounts of all amounts collected pursuant to this Court's Orders and the disposition thereof, including a detailed, itemized and fully documented report of all receipts, earnings on such amounts, charges against such amounts, and any other material matter. John L. Bagwell, who has been designated to succeed Messrs. Massie and Hodges as special commissioner, shall succeed to all the functions, powers, duties and obligations of the prior special commissioners. Messrs. Massie and Hodges and all other attorneys, accountants or others shall immediately make available to Mr. Bagwell all documents and files generated by them as special commissioners in Chancery or in furtherance of the special commissioner's collection efforts to John L. Bagwell and shall cooperate with him in the transferral of all files, information, etc., and shall make themselves available to meet with him to explain all actions taken, all

documents in their possession and to answer such questions as Mr. Bagwell may have concerning their conduct as special commissioners in Chancery, attorney, accountant, etc., concerning his duties as their successor. The said John L. Bagwell shall have authority to take all actions as may be necessary to collect the fines including but not limited to the filing of legal actions, pleadings, notices, liens, the retaining of other attorneys, accountants experts and others necessary, but with prior approval of the Court, in any jurisdiction necessary to effect the intent of this Order.

ENTER: this 11th day of September, 1990.

/s/ Donald A. McGlothlin, Jr.
DONALD A. MCGLOTHLIN, JR.
Judge

Seen and Objected to:

/s/ Illegible
Counsel for Plaintiffs

/s/ Illegible
Counsel for International and
Hudson

/s/ Illegible
Counsel for District 28 and
Other Defendants

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

IN CHANCERY NO. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS
OF AMERICA, *et al.*,
Defendants.

ORDER

The Court has had under advisement the question of what sanctions, if any, should be imposed for injunction violations occurring before the prospective fines were announced on May 16, 1989, and has received and considered the briefs and arguments of counsel on this point, and on December 15, 1989, the Court advised counsel of its decision.

For reasons previously stated, the Court is of the opinion that the prospective fines announced May 16, 1989, are civil and coercive in nature, but the fines for violations occurring on or before May 16, 1989, are criminal in nature. Although the violations did occur and there was no objection to imposition of criminal fines until after the hearings on May 16, 1989, and June 2, 1989, the Court concludes that it should not impose these criminal fines.

It is therefore ORDERED that the following fines be, and they are hereby, vacated and set aside:

1. The $1,000 fine and $12,000 suspended fine against Marty D. Hudson for injunction violations in the Court's Order of May 18, 1989;

2. The $1,000 fine and $12,000 suspended fine against Jackie Stump for injunction violations in the Court's Order of May 18, 1989;

3. The $26,000 fine and $150,000 suspended fine against District 28 for injunction violations in the Court's Order of May 18, 1989; and

4. The $190,000 fine and $250,000 suspended fine against the International for injunction violations in the Court's Order of May 18, 1989.

It is further ORDERED that no criminal sanctions will be imposed in this case for the pre-May 17, 1989, injunction violations proven by plaintiffs at the hearing on June 2, 1989.

All other rulings of the Court on May 16, 1989, and June 2, 1989, and all other portions of the Court's Order of May 18, 1989, shall remain in full force and effect.

ENTER: this 21st day of December, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen and objected to:

/s/ Illegible
Counsel for Plaintiffs

Seen:

/s/ Illegible
Counsel for Defendants
International and Hudson

/s/ Illegible
Counsel for Defendants
District 28 and Others

VIRGINIA:

IN THE SUPREME COURT OF RUSSELL COUNTY

In Chancery No. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

EIGHTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT

On December 7-8, 1989, this matter was before the Court on the Tenth Rule to Show Cause issued against defendant International Union, United Mine Workers of America (the International). The International's motion to dismiss the tenth rule and motion for a jury trial were denied for the reasons stated in the record. At the conclusion of the evidence on December 8, 1989, and argument of counsel, the Court announced its decision from the bench.

Upon consideration, the Court finds that the evidence shows beyond a reasonable doubt that the International is in contempt of Court for the following violations of the Court's injunctions and liquidates the prospective fines previously announced on May 16 and June 2, 1989, as follows:

198 a 1	**violence**	**$ 500,000**
198 a 2	**violence**	**500,000**
199	**violence**	**100,000**
205	**violence**	**100,000**

206 a 1	violence	$ 100,000
207 a 3	violence	100,000
208 b	roving/moving	1,000,000
207 a 3	violence	100,000
208 a 1	violence	100,000
208 a 2	violence	100,000
211 a 1	violence	100,000
211 b	roving/moving	1,000,000
211 a 3	violence	100,000
211 a 4	violence	100,000
212 a 2	violence	500,000
212 a 3	violence	100,000
212 a 4	violence	100,000
212 b	roving/moving	1,000,000
212 a 3	violence	100,000
214	violence	100,000
215 a 1	violence	100,000
215 a 2	violence	100,000
215 a 4	violence	100,000
215 b	roving/moving	1,000,000
216 a 1	violence	500,000
216 a 2	violence	100,000
216 a 3	violence	100,000
217 a 1	violence	100,000
217 a 2	violence	100,000
219 a 1	violence	100,000
219 a 2	violence	100,000
219 a 3	violence	100,000
220	violence	100,000
221 a 1	violence	100,000
222	violence	100,000
223 a	failure to use all lawful means	1,000,000
223 b	failure to report violences	500,000
	TOTAL	$10,300,000

On motion of plaintiffs, the following specifications were nonsuited: 202, 203 a 1, 203 a 2, 204, 207 a 1, 209 a 1, 212 a 1, 213 a 1, 216 a 6, and 216 a 7. The remainder of the specifications in the Tenth Rule (not adjudicated above or nonsuited) are dismissed with prejudice.

It is ORDERED that the International shall pay the foregoing $10,300,000 in fines to the Clerk of this Court by 4:00 p.m., December 15, 1989, as follows:

$3,700,000 to the Clerk of this Court for the Commonwealth of Virginia;

$2,800,000 to the Clerk of this Court for Russell County, Virginia;

$1,800,000 to the Clerk of this Court for Dickenson County, Virginia; and

$2,000,000 to the Clerk of this Court for Clinchfield Coal Company and Sea "B" Mining Company.

The following individuals, International officers and members of the International's Executive Board, are ORDERED, individually and collectively, to take all actions necessary to effect immediate payment of all outstanding fines under the Court's Third, Fourth, and Fifth Orders Adjudicating Defendant in Contempt; and they are also ORDERED, individually and collectively, to take all actions necessary to effect payment of the fines liquidated under the Sixth, Seventh, and this Eighth Order Adjudicating Defendant in Contempt and under the Order Liquidating Fines under Sixth Contempt Order, by 4:00 p.m., December 22, 1989:

Richard L. Trumka

Cecil E. Roberts

John J. Banovic

Tommy E. Buchanan

Robert Burchell

Charles Dixon
Larry Joe Draper
Howard L. Green
Anthony Grajeda
Stuart L. Johnson
Daniel J. Kane
Anthony R. Kujawa
Lyle McGowan
Roger T. Myers
Jerome Neal
Walter E. Oviatt
Cecil M. Partin
William C. Ray
James Russell
Thomas J. Shumaker
Jimmy H. Smith
Jackie Stump
C. Danny Surface
Stephen F. Webber

It is further ORDERED that counsel for defendant shall immediately notify each of the foregoing officers and executive board members of the rulings announced by this Court on December 8, 1989.

It is further ORDERED that the Clerk shall forthwith cause a copy of the following orders to be served by certified mail, return receipt requested, restricted delivery, on each of the foregoing officers and executive board members:

—Fourth Order Adjudicating Defendant in Contempt, entered September 21, 1989;

—Fifth Order Adjudicating Defendant in Contempt, entered October 9, 1989;

—Sixth Order Adjudicating Defendant in Contempt, entered November 16, 1989;

—Order Liquidating Fines Under Sixth Contempt Order, entered this day;

—Seventh Order Adjudicating Defendant in Contempt, entered this day; and

—Eighth Order Adjudicating Defendant in Contempt, entered this day.

It is further ORDERED that, until all fines are paid or properly bonded, the foregoing officers and executive board members shall cause a copy of each of the foregoing orders to be read in full at every meeting of the officers or the executive board, by the secretary-treasurer of the International, John J. Banovic, who shall file an affidavit with the Clerk of this Court immediately after each such meeting stating the date, time and location of such meeting and whether or not the orders were read as here directed; in addition, it is ORDERED that the person who gives notice of any future meeting of the officers or executive board shall also give contemporaneous notice of such meeting to the Clerk of this Court by telephone and certified mail, return receipt requested, restricted delivery, said notice stating the precise date, time, and location of such meeting.

The Court has previously appointed Stephen M. Hodges and Wade W. Massie special commissioners to collect fines liquidated under the Third Order Adjudicating Defendants in contempt entered July 27, 1989, and under the Fourth Order Adjudicating Defendant in Contempt entered September 21, 1989. The defendants have filed a motion to quash execution or for a stay of execution and a motion for an injunction against the special commissioners. Upon consideration of said motions, and the briefs and arguments of counsel, it is ORDERED that said motions be, and they are hereby, denied. It is further ORDERED that the special commissioners, either

of whom may act, are appointed to collect all unpaid and unbonded fines under the Fifth, Sixth, Seventh, and this Eighth Order Adjudicating Defendant in Contempt and under the Order Liquidating Fines under Sixth Contempt Order. The special commissioners are directed to proceed immediately to collect all such fines and are authorized and empowered to undertake all necessary or convenient means of collection, including but not limited to, docketing, interrogatories, lien notices, levy exception, garnishment, attachment, and creditor's bill, wherever the defendants may have property or assets, until all such fines are paid in full. The special commissioners are further authorized to employ attorneys and accountants in any jurisdiction to assist them in the collection or the prosecution or defense of any litigation, related to the collection. All fines collected shall be paid to the Clerk of this Court and distributed by the Court.

In view of defendant's contempt, the refusal of defendant to pay or bond fines previously announced, the absence of any representation by defendant that it will attempt to pay or bond such fines, the necessity for speedy action to make this Order effective, and for good cause shown, it is further ORDERED that judgment shall be immediately docketed and execution shall immediately issue if the fines liquidated by this Order are not paid or bonded by the data and time stated above.

This Order is entered pursuant to due notice and waiver of appearance and endorsement by counsel for defendants.

ENTER: this 15th day of December, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen:

/s/ Stephen M. Hodges
Counsel for Plaintiffs

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

IN CHANCERY NO. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,
v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

SEVENTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT

On November 15-16, 1989, this matter was before the Court on the Ninth Rule to Show Cause issued against defendant International Union, United Mine Workers of America (the International). The International's motion to dismiss the ninth rule and motion for a jury trial were denied for the reasons stated in the record. At the conclusion of the evidence presented and arguments of counsel, the Court took the case under advisement and announced its decision on December 8, 1989.

Upon consideration, the Court finds that the evidence shows beyond a reasonable doubt that the International is in contempt of Court for the following violations of the Court's injunctions and liquidates the prospective fines previously announced on May 16 and June 2, 1989, as follows:

181.1 a	**violence**	**$ 100,000**
181.1 c	**violence**	**100,000**
181.2 b	**violence**	**100,000**
181.2 c	**violence**	**100,000**
181.3 b	**violence**	**100,000**

182 a	violence	100,000
182 c	violence	100,000
183 b 1	picket limitations	
183 b 2	roving/moving	
183 b 4	blocking entrance	1,000,000
186 b	violence	100,000
186.5 a	violence	100,000
188 a 1	violence	100,000
188 a 4	violence	100,000
188 a 5	violence	500,000
190 a 1	violence	100,000
190 a 2	violence	100,000
190 a 2.5	violence	100,000
191.5 d	violence	100,000
192 b	roving/moving	1,000,000
193 a 2	violence	100,000
193 a 4	violence	100,000
193 a 5	violence	100,000
193 a 6	violence	100,000
193 a 7	violence	100,000
193 a 8	violence	100,000
195 a 1	violence	100,000
195 a 2	violence	100,000
195 b	roving/moving	1,000,000
197 a	failure to use all lawful means	1,000,000
197 b	failure to report violations	500,000
	TOTAL	$7,300,000

On motion of plaintiffs, the following specifications were nonsuited: 181.3 a and 192 a 1. The remainder of the specifications in the ninth rule (not adjudicated above or nonsuited) are dismissed with prejudice.

It is ORDERED that the International shall pay the foregoing $7,300,00 in fines to the Clerk of this Court by 4:00 p.m., December 22, 1989, as follows:

$2,650,000	to the Clerk of this Court for the Commonwealth of Virginia;
$2,000,000	to the Clerk of this Court for Russell County, Virginia;
$1,250,000	to the Clerk of this Court for Dickenson County, Virginia; and
$1,400,000	to the Clerk of this Court for Clinchfield Coal Company and Sea "B" Mining Company.

In view of defendant's contempt, the refusal of defendant to pay or bond fines previously announced, the absence of any representation by defendant that it will attempt to pay or bond such fines, the necessity for speedy action to make this Order effective, and for good cause shown, it is further ORDERED that judgment shall be immediately docketed and execution shall immediately issue if the fines liquidated by this Order are not paid or bonded by the date and time stated above.

The International's officers and executive board members are ORDERED to take action to pay these fines and to take other measures as set forth in the Court's Eighth Order Adjudicating Defendant in contempt entered today, and special commissioners are appointed and empowered as set forth in that Eighth Order.

This Order is entered pursuant to due notice and waiver of appearance and endorsement by counsel for defendants.

ENTER: this 15th day of December, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen:

/s/ Stephen M. Hodges
Counsel for Plaintiffs

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

IN CHANCERY NO. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

SIXTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT

On October 23-24, 1989, this matter was before the Court on the Eighth Rule to Show Cause issued against defendant International Union, United Mine Workers of America(the International). At the conclusion of the evidence presented and arguments of counsel, the Court took the case under advisement and announced its decision on October 30, 1989.

Upon consideration, the Court finds that the evidence shows beyond a reasonable doubt that the International is in contempt of Court for the following violations of the Court's injunctions:

154 a 1	**violence**
154 a 2	**violence**
155 a 1	**violence**
155 a 3	**violence**
155 b 1	**illegal picket site**
156 b 1	**illegal picket site**
157 a 1	**violence**

157 a 4	**violence**
157 a 5	**violence**
157 a 6	**violence**
157 a 11	**violence**
157 a 12	**violence**
157 a 13	**violence**
157 a 14	**violence**
157 a 16	**violence**
157 b 1	**illegal picket site**
158 a 3	**violence**
158 a 9	**violence**
158 a 10	**violence**
158 a 12	**violence**
158 a 13	**violence**
158 a 14	**violence**
158 b 1	**illegal picket site**
158 b 2	**roving/moving**
159 a 1	**violence**
159 a 2	**violence**
159 a 3	**violence**
159 a 4	**violence**
159 b 1	**illegal picket site**
159 b 2	**roving/moving**
160 a 3	**violence**
160 b 1	**illegal picket site**
162 a 5	**violence**
162 a 7	**violence**
162 a 8	**violence**
162 a 9	**violence**
162 b 1	**illegal picket site**
162 b 2	**roving/moving**
163 a	**violence**
163 b 1	**illegal picket site**
163 b 2	**roving/moving**
164 a 1	**violence**

164 a 5	violence
164 a 6	violence
164 a 7	violence
164 a 8	violence
164 a 9.1	violence
164 b 1	illegal picket site
164 b 2	roving/moving
165 a 2	violence
165 b 1	illegal picket site
165 b 2	roving/moving
167 a 2 b	violence
167 a 2 c	violence
168 b 1	illegal picket site
168 b 2	roving/moving
169 a 1	violence
169 a 2	violence
169 b 1	illegal picket site
169 b 2	roving/moving
170 b 1	illegal picket site
173 b 2	blocking entrance
173 b 3	picket limitations
173 b 4	picket limitations
173 b 5	roving/moving
173 b 6	seizing plant
174 b 2	blocking entrance
174 b 3	picket limitations
174 b 4	picket limitations
174 b 5	roving/moving
174 b 6	seizing plant
175 b 2	blocking entrance
175 b 3	picket limitations
175 b 4	picket limitations
175 b 5	roving/moving
175 b 6	seizing plant
176 b 2	blocking entrance

176 b 3	picket limitations
176 b 4	picket limitations
176 b 5	roving/moving
176 b 6	seizing plant
179 a	failure to use all lawful means
179 b	failure to report violations
179 c	failure to make service

For the reasons stated from the bench, the Court defers liquidation of prospective fines on these violations until December 8, 1989, at which time the Court will hear evidence as to the state of compliance with the injunctions.

The Court finds the evidence insufficient to sustain and, therefore, dismisses with prejudice the following specifications: 152 a 1, 152 a 2, 153, 155 a 2, 155 a 4, 156 a 1, 156 a 2, 157 a 1.1, 157 a 3, 157 a 5.1, 157 a 7, 157 a 10, 157 a 17, 158 a 1, 158 a 6, 158 a 7, 158 a 7.1, 158 a 11, 159 a 5, 160 a 2, 160 a 4, 162 a 1, 162 a 4, 162 a 6, 162 a 10, 164 a 3, 164 a 4, 164 a 9.2, 164 a 11, 164 a 12, 165 a 1, 166 a, 167 a 2 a, 168 a 1, 169 a 3, 170 a 1, 170 b 2, 171 b 1, 172 b, 173 a, 173 b 1, 174 b 1, 175 b 1, 176 b 1, 177 b 1, 178 b 1.

The remaining specifications in the Eighth Rule are nonsuited and dismissed without prejudice.

In its Fourth Order Adjudicating Defendant in Contempt, entered September 21, 1989, the Court found the defendant in contempt on specifications 151 b (failure to report violations) and 151 a (failure to make service on its members) but took under advisement what amounts of the prospective fines to liquidate for these violations. For the reasons stated from the bench on October 30, 1989, the Court decides to liquidate no amount for these violations.

The Court has also had under consideration the International's motion to allow picket sites at the Carbo inter-

section. The Carbo picket sites have been established and manned through September 13, 1989, in violation of the Court's injunctions and the evidence shows that the International has committed numerous acts of violence at these locations. The Court therefore denies the International's motion to allow these picket sites. The Court has under advisement what fines to liquidate for these sites in the Eighth Rule, but no further fines will be liquidated for these sites under earlier Rules.

The defendants' motion to dismiss the Eighth Rule, motion for trial by jury, motion for postponement, and motion for recusal are all overruled and denied.

The Clerk shall send attested copies of this Order to counsel of record.

ENTER: this 16th day of November, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen and Objected to:

/s/ Stephen M. Hodges
Counsel for Plaintiffs

/s/ [Illegible]
Counsel for Defendants

VIRGINIA:

In the Circuit Court for the County of Russell on Monday the 6th day of November in the year of our Lord, One thousand nine hundred eighty nine.

Present: The Honorable Donald A. McGlothlin, Jr., Judge.

IN CHANCERY NO. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,
v.
INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

ORDER

On October 30, 1989, the Court heard arguments of counsel on defendant International Union's Motion to Set Aside Order of [October 9, 1989] as Being Contrary to the Law and Evidence.

Upon consideration of which, the Court announced that said motion was not well founded and should not be granted. It is therefore ORDERED that said motion be, and it is hereby, denied.

ENTER: this 6th day of November, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen:

/s/ Stephen M. Hodges
Counsel for Plaintiffs

Seen and Objected to:

/s/ [Illegible]
Counsel for Defendants

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

IN CHANCERY NO. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

ORDER

On October 3, 1989, the Court heard arguments on defendants' Motion for Recusal.

Upon consideration of which, the Court is of the opinion that said motion was not well founded and should not be granted. It is therefore ORDERED that said motion be, and it is hereby, denied.

ENTER: this 11th day of October, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen:

/s/ Stephen M. Hodges
Counsel for Plaintiffs

Seen and Objected to:

/s/ [Illegible]
Counsel for Defendants

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

In Chancery No. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

FIFTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT

On October 4-5, 1989, this matter was before the Court on the remaining specifications of violence in the Seventh Rule to Show Cause issued against defendant International Union, United Mine Workers of America (the International). Following presentation of the evidence and arguments of counsel, the Court announced its decision on October 5, 1989.

Upon consideration, the Court finds that the evidence shows beyond a reasonable doubt that the International is in contempt of Court for the following violations of the Court's injunctions and liquidates the prospective fines previously announced on May 16 and June 2, 1989, as follows:

116 a 3	**violence**	**$ 100,000**
117 a 3	**violence**	**$ 100,000**
117 a 6	**violence**	**$ 100,000**
117 a 7	**violence**	**$ 100,000**
119 a 4	**violence**	**$ 100,000**

121 a 3	violence	$ 100,000
122 a 7	violence	$ 100,000
123 a 6	violence	$ 100,000
124 a 2	violence	$ 100,000
125 a 3	violence	$ 100,000
126 a 4	violence	$ 100,000
128 a 4	violence	$ 100,000
129 a 5	violence	$ 100,000
129 a 7, a 9	violence	$ 100,000
130 a 1	violence	$ 100,000
130 a 4	violence	$ 100,000
130 a 5	violence	$ 100,000
130 a 8	violence	$ 100,000
131 a 1	violence	$ 100,000
131 a 4	violence	$ 100,000
131 a 5	violence	$ 100,000
131 a 6	violence	$ 100,000
132 a 1	violence	$ 100,000
132 a 7	violence	$ 100,000
133 a 1	violence	$ 100,000
133 a 2	violence	$ 100,000
133 a 8	violence	$ 100,000
133 a 11	violence	$ 100,000
135 a 3	violence	$ 100,000
137 a 3	violence	$ 100,000
139 a 1	violence	$ 100,000
141 a 4	violence	$ 100,000
142 a 1	violence	$ 100,000
142 a 2	violence	$ 100,000
142 a 3	violence	$ 100,000
142 a 4	violence	$ 100,000
142 a 7	violence	$ 100,000
142 a 8	violence	$ 100,000
142 a 12, a 13, a 14	violence	$ 100,000

142 a 16	violence	$ 100,000
144 a 3	violence	$ 100,000
144 a 5	violence	$ 100,000
144 a 6	violence	$ 100,000
144 a 9	violence	$ 100,000
144 a 12	violence	$ 100,000
144 a 14	violence	$ 100,000
144 a 15	violence	$ 100,000
144 a 16	violence	$ 100,000
144 a 19	violence	$ 100,000
144 a 22	violence	$ 100,000
144 a 23	violence	$ 100,000
144 a 25	violence	$ 100,000
145 a 3	violence	$ 100,000
145 a 4	violence	$ 100,000
145 a 6	violence	$ 100,000
146 a 1	violence	$ 100,000
146 a 5	violence	$ 100,000
147 a 3	violence	$ 100,000
147 a 5, a 6, a 7	violence	$ 500,000
147 a 8	violence	$ 100,000
147 a 9	violence	$ 100,000
147 a 10	violence	$ 100,000
147 a 12	violence	$ 100,000
149	violence	$ 100,000
	TOTAL	$6,900,000

The Court also finds that the evidence sustains specification 130 a 2 but, for the reasons stated from the bench, the Court liquidates no amount for this violation.

The Court finds the evidence insufficient to sustain the following specifications: 117 a 4, 119 a 2, 122 a 2, 123 a 5, 123 a 7, 126 a 1, 127 a 1, 128 a 3, 129 a 6, 130 a 3, 145 a 5, and 146 a 3. All remaining specifications in the Seventh Rule not adjudicated above or by prior

Orders are dismissed with prejudice without objection from plaintiffs.

It is ORDERED that the International shall pay the foregoing $6,900,000 in fines to the Clerk of this Court by 5:00 p.m., October 13, 1989, as follows:

$2,500,000 to the Clerk of this Court for the Commonwealth of Virginia;

$1,200,000 to the Clerk of this Court for Dickenson County, Virginia;

$1,400,000 to the Clerk of this Court for Clinchfield Coal Company.

The following individuals, International officers and members of the International's Executive Board, are ORDERED to take all actions necessary to effect payment of the foregoing $6,900,000 in fines by the date and time stated above:

Richard L. Trumka
Cecil E. Roberts
John J. Banovic
Tommy E. Buchanan
Robert Burchell
Charles Dixon
Larry Joe Draper
Howard L. Green
Anthony Grajeda
Stuart L. Johnson
Daniel J. Kane
Anthony R. Kujawa
Lyle McGowan
Roger T. Myers
Jerome Neal
Walter E. Oviatt

Cecil M. Partin
William C. Ray
Thomas J. Shumaker
Jimmy H. Smith
Jackie Stump
C. Danny Surface
Stephen F. Webber

It is further ORDERED that counsel for the International shall immediately cause a copy of this Order to be served personally on each of the foregoing individuals and mailed to them certified mail, return receipt requested, restricted delivery. The returns of such service and the return receipts for mailing shall be immediately filed with the Clerk of this Court. The International shall also immediately file the returns of service and the return receipts for mailing required for said individuals under the Court's Fourth Order Adjudicating Defendant in Contempt, entered September 21, 1989.

It is further ORDERED that this Order and the Court's Fourth Order Adjudicating Defendant in Contempt, entered September 21, 1989, be read in full at each and every meeting of the International's officers and at each and every meeting of the International's Executive Board, until all outstanding fines are either properly bonded or paid in full, and an affidavit of each such reading shall be immediately filed with the Clerk by an appropriate officer or Board member.

In view of the defendant's contempt, the refusal of defendant to pay or bond fines previously ordered, the defendant's judgments, the necessity for speedy action to make this Order effective, and for good cause shown, it is further ORDERED that execution shall issue on or after 5:01 p.m., October 13, 1989, as to all unpaid or unbonded fines liquidated by this Order.

ENTER: this 9th day of October, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen:

/s/ Stephen M. Hodges
Counsel for Plaintiffs

Seen and Objected to:

/s/ James Haviland
Counsel for International

/s/ James J. Vergara Jr.
Counsel for District 28
and Other Defendants

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendant

HEARING

[Filed Dec. 5, 1989]

The following hearing was taken at 9:00 a.m. on October 5, 1989 in the Circuit Court of Russell County with The Honorable Donald McGlothlin Jr.

PRESENT:

Steve Hodges, Esquire
Wade Massie, Esquire
Counsels for Plaintiff

James Haviland, Esquire
Bill Shults, Esquire
James Vergara, Esquire
Counsels for Defendants

* * * *

[4172] THE COURT: Ladies and Gentlemen, The Court has considered the evidence and argument of counsel and based upon those, makes the following findings: The Court finds that the evidence establishes beyond reasonable doubt that the Defendant, the International Union, UMWA, is guilty of 71 violations involving violence of The Court's previous orders. The Court finds the following specifications have been proven beyond reasonable doubt. Those allegations and specifications [4173] Paragraph 116 A3; 117 A3, 6 and 7; 119 A4;

121 A3; 122 A7; 123 A6; 124 A2; 125 A3; 126 A4; 128 A4; 129 A5, 7 and 9; 130 A1, 2, 4, 5 and 8; 131 A1, 4, 5 and 6; 132 A1 and 7; 133 A1, 2, 8 and 11; 135 A3 and 4; 137 A3; 139 A1; 141 A4; 142 A1, 2, 3, 4, 7, 8, 12, 13, 14 and 16; 144 A3, 5, 6, 9, 12, 14, 15, 16, 19, 22, 23 and 25; 145 A3, 4 and 6; 146 A1 and 5; 147 A3, 5, 6, 7, 8, 9, 10 and 12; and the specification contained in Paragraph 149. The Court finds that the proof is insufficient and finds the Defendant not guilty of the following specifications: Paragraph 117 A4; Paragraph 119 A2; 122 A2; 123 A5 and 7; 126 A1; 127 A1; 128 A3; 129 A6; 130 A3; 145 A5; and 146 A3. That is a total of 12 specifications that The Court has found the Defendant not guilty of. The other several allegations and specifications have previously been ruled on in prior hearings or earlier in this hearing. The Court will impose and liquidate the following minimum civil penalties on each of the violations except as noted in just a moment. Except the allegations contained in Paragraphs 129 A 7 and 9; Paragraph 130 A2; Paragraphs 142 A12, 13 and 14; and Paragraphs 147 A5, 6 and 7; The Court liquidates a $100,000.00 minimum civil penalty for each of the other violations. For the violations found in Paragraphs 129 A7 and 9, The Court liquidates a $100,000.00 penalty total for the two, considering that those two are basically one [4174] incident. For Paragraph 130 A2, The Court liquidates no penalty in this hearing as it feels this violation is part and parcel of the same incident which occurred and is set forth in Paragraph 130 A11 as involving Mr. Morris Barton or "Moose" Barton and there has already been a penalty liquidated for that. In Paragraphs 142 A12, 13 and 14, The Court liquidates a total of a $100,000.00 penalty considering, The Court considers those three violations to be basically one incident. In Pargraph 147 A5, 6 and 7, again The Court considers these to be the same incident, however, The Court feels that the evidence showed a vicious attack, a gorilla attack on three individuals who were working at one of the Plaintiff's facilities, I believe,

it was the Lambert Fork Mine, Lamber Fork Number 2 mine. These were the incidents you will recall which occurred on Route 63, just outside of or between Sun and St. Paul, Virginia. I believe it was near the Hanging Rock Clinic was the testimony. The Court feels that due to the aggravated nature of these incidents that a $500,000.00 penalty should be liquidated and will so order. Now, The Court's calculations, the total penalties liquidated come to $6,000,900,000.00. They will be paid as follows: $2,000,500,000.00 to the Commonwealth of Virginia; $1,000,800,000.00 to Russell County, Virginia; $1,000,200,000.00 to Dickenson County, Virginia; and [4175] $1,000,400,000.00 to Clinchfield Coal Company. All fines or liquidated penalties will be due and payable no later than 5:00 p.m. October 13, 1989, to the Clerk of This Court, payable here at the Russell County Courthouse. The following officers of the Defendant, International Union, UMWA, are specifically ordered to take all actions necessary to effect the payment previously ordered; Richard Trumka, Cecil Roberts, John Banivick and each individual member of the Defendant's International Executive Board. The Court will further order that each of these individuals be served with a copy of the Order which commemorates this ruling immediately by personal service and by Certified Mail—Return Receipt Requested, Restricted Delivery and in addition, by delivery by Counsel for the Defendant to each of these individuals with Counsel's certification upon completing of this delivery. The Court will further order that this Order and, gentlemen, you will have to assist The Court, was the last Order entered September 21?

MR. HAVILAND: I believe that is correct, Your Honor.

THE COURT: All right. The order commemorating this ruling and the Order that was entered September 21, shall be read at all meetings of any of the executive officers, executive Board members and/or the [4176] three

executives, the President, Vice President and Secretary/ Treasurer which might occur in the future. In other words, both of these Orders will be read in their entirety to those gentlemen when they meet at any time. Is there any question about The Court's ruling? I am sorry, I have neglected one further thing. The Court further orders that the Special Commissioners which have previously been appointed, Mr. Hodges and Mr. Massie, shall take all the necessary action to collect the liquidated penalties amounts today. If they are not paid on or before the time stated, unless The Court enters an Order staying, This Court or another Court of competent jurisdiction enters a Court staying that action. Now, gentlemen, is there any question?

MR. HAVILAND: Your Honor, was the due date October 15?

THE COURT: The 13th, Friday, October 13th at five o'clock. That is five business days as I count them.

MR. HODGES: No questions, Your Honor.

THE COURT: All right, Ladies and Gentlemen, I believe that we have an additional set of hearings beginning later this month, October 23 and 24th, so I suppose The Court will see all of the parties, or the Counsel at least at that time. Court will be adjourned.

[4177] MR. SHULTS: Your Honor?

THE COURTS: Yes, sir.

MR. SHULTS: We had filed a motion to reconsider on, regarding the September 21 Order—

THE COURT: Be seated Ladies and Gentlemen.

MR. SHULTS: Sorry, we would just like to take that up within 21 days, when would The Court entertain us on that?

THE COURT: Well, why don't we go ahead, I have to get The Court's calendar, which is in Chambers, if you would just meet me in Chambers, we will try to set up a hearing date for that. We will be adjourned.

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

In Chancery No. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

ORDER

On request of the Special Commissioners, Stephen M. Hodges and Wade W. Massie, and for good cause shown, it is ORDERED that the Special Commissioners be, and they are hereby authorized:

(1) to employ counsel and accountants in the District of Columbia to assign them in the collection of the outstanding fines in this matter;

(2) to employ accountants in Virginia to assist them in the collection of the outstanding fines in this matter.

The fees of said counsel and accountants may be paid by the Special Commissioners out of the proceeds of the fines collected prior to deposit of said fines with the Clerk. If, within 30 days after notice of payment of said fees and expenses, any party in interest objects to the reasonableness of the amounts paid, the Court will schedule a hearing on such matter, determine the issue, and take such action as it may deem appropriate under the cir-

cumstances. Endorsement by counsel for District 28 is dispensed with.

ENTER: this 29th day of September, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

/s/ Stephen M. Hodges
STEPHEN M. HODGES
Special Commissioner

/s/ Wade W. Massie
WADE W. MASSIE
Special Commissioner

Seen

/s/ Stephen M. Hodges
Counsel for Plaintiffs

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

In Chancery

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

FOURTH ORDER ADJUDICATING DEFENDANT IN CONTEMPT

On September 13-14, 1989, this matter was before the Court on the specifications of nonviolence contained in the Seventh Rule to Show Cause and Supplemental Rule to Show Cause previously issued against defendant International Union, United Mine Workers of America (the International), as well as 40 specifications of violence in the Seventh Rule designated for hearing on those days.

Upon consideration of which, for the reasons stated from the bench on September 18 and 19, 1989, the Court finds that the evidence shows beyond a reasonable doubt that the International is in contempt of Court for the following violations of the Court's injunctions and liquidates the prospective fines previously announced on May 16 and June 2, 1989, as follows:

115 a 3	**violence**	**$ 100,000**
116 a 1	**violence**	**$ 100,000**
117 a 1	**violence**	**$ 100,000**
117 a 8	**violence**	**$ 100,000**

121 a 1	violence	$ 100,000
122 a 3	violence	$ 100,000
123 a 4	violence	$ 100,000
125 a 2	violence	$ 100,000
126 a 3	violence	$ 100,000
127 a 2	violence	$ 100,000
128 a 2	violence	$ 100,000
129 a 3	violence	$ 500,000
130 a 9	violence	$ 100,000
130 a 10	violence	$ 100,000
131 a 8	violence	$ 500,000
132 a 5	violence	$ 100,000
133 a 12	violence	$ 100,000
135 a 1	violence	$ 100,000
136 a 1	violence	$ 100,000
137 a 4	violence	$ 100,000
140 a 3	violence	$ 100,000
141 a 1	violence	$ 100,000
142 a 5	violence	$ 100,000
144 a 18	violence	$ 100,000
144 a 24	violence	$ 100,000
145 a 1	violence	$ 100,000
145 a 2	violence	$ 100,000
146 a 2	violence	$ 100,000
———	violence	$ 500,000
147 a 11	violence	$ 100,000
150	violence	$ 100,000
118 b 2	roving	$ 200,000
119 b 2	roving	$ 200,000
121 b 2	roving	$ 200,000
122 b 2	roving	$ 200,000
123 b 2	roving	$ 200,000
124 b 2	roving	$ 200,000
125 b 2	roving	$ 200,000
126 b 2	roving	$ 200,000

127 b 2	roving	$ 200,000
128 b 2	roving	$ 200,000
129 b 2	roving	$ 200,000
130 b 2, b 4	roving, blocking, excessive numbers	$ 500,000
131 b 2	roving	$ 500,000
132 b 2	roving	$ 500,000
133 b 2	roving	$ 500,000
135 b 2	roving	$ 500,000
137 b 2	roving	$ 500,000
138 b 2	roving	$ 500,000
140 b 2	roving	$ 500,000
142 b 2, b 4	roving, blocking	$ 500,000
144 b 2	roving	$ 500,000
146 b 2	roving	$ 500,000
147 b 2	roving	$ 500,000
151 a 1	failure to use all lawful means	$ 1,000,000
	TOTAL:	$13,500,000

It is further ORDERED that the International shall pay the foregoing $13,500,000 in fines by 5:00 p.m. on September 26, 1989, as follows:

$6,000,000 to the Clerk of this Court for the Commonwealth of Virginia;

$4,500,000 to the Clerk of this Court for Russell County, Virginia;

$3,000,000 to the Clerk of this Court for Dickenson County, Virginia.

The Court also finds beyond a reasonable doubt that the International is in contempt of Court as stated in specifications 151 b, failure to report violations, and 151 c, failure to make service on its members, but takes under advisement the question of what amounts of the prospective fines to liquidate for said violations. The

Court also takes under advisement the specifications relating to unauthorized picket shacks.

On September 18-19, 1989, this matter was before the Court on an additional 60 specifications of violence in the Seventh Rule previously designated for hearing on those days. Whereupon, at the request of plaintiffs, the Court continued 12 specifications (116 a 3, 119 a 2, 122 a 2, 132 a 1, 133 a 1, 142 a 2, 142 a 3, 142 a 4, 144 a 5, 144 a 14, 144 a 25, and 149) until October 4-5, 1989, conditioned upon a showing that the witnesses were detained because of strike action and, at the request of plaintiffs, dismissed 4 specifications (115 a 5, 123 a 1, 131 a 2, and 142 a 17).

Upon consideration of the remainder of the 60 designated specifications, the Court finds that the evidence shows beyond a reasonable doubt that the International is in contempt of Court for the following violations of the Court's injunctions and liquidates the prospective fines previously announced on May 16 and June 2, 1989, as follows:

114 a 1	**violence**	**$ 100,000**
114 a 2	**violence**	**$ 100,000**
115 a 1	**violence**	**$ 100,000**
115 a 2	**violence**	**$ 100,000**
115 a 4	**violence**	**$ 100,000**
116 a 2	**violence**	**$ 100,000**
116 a 4	**violence**	**$ 100,000**
122 a 1	**violence**	**$ 100,000**
122 a 5	**violence**	**$ 100,000**
128 a 1	**violence**	**$ 100,000**
129 a 1	**violence**	**$ 100,000**
129 a 2	**violence**	**$ 100,000**
129 a 4	**violence**	**$ 100,000**
129 a 8	**violence**	**$ 100,000**
130 a 7	**violence**	**$ 100,000**

130 a 11	**violence**	**$ 100,000**
131 a 3	**violence**	**$ 100,000**
132 a 3	**violence**	**$ 100,000**
132 a 4	**violence**	**$ 100,000**
132 a 6	**violence**	**$ 100,000**
133 a 5	**violence**	**$ 100,000**
133 a 10	**violence**	**$ 100,000**
138 a 1	**violence**	**$ 100,000**
138 a 2	**violence**	**$ 100,000**
140 a 2	**violence**	**$ 100,000**
140 a 4	**violence**	**$ 100,000**
141 a 3	**violence**	**$ 100,000**
141 a 5	**violence**	**$ 100,000**
142 a 9	**violence**	**$ 100,000**
144 a 1	**violence**	**$ 100,000**
144 a 2	**violence**	**$ 100,000**
144 a 4	**violence**	**$ 100,000**
144 a 17	**violence**	**$ 100,000**
144 a 21	**violence**	**$ 100,000**
	TOTAL:	**$3,400,000**

It is further ORDERED that the International shall pay the foregoing $3,400,000 in fines to the Clerk of the Court for Clinchfield Coal Company, by 5:00 p.m. September 26, 1989.

It appearing to the Court that the defendants have not paid any of the previously liquidated fines, and the defendants advising the Court that no efforts are foreseen to effect payment of such fines, it is therefore FURTHER ORDERED that Stephen M. Hodges and Wade W. Massie, either of whom may act, be, and they are hereby, appointed special commissioners by the Court to collect all fines liquidated by Orders entered on or after July 27, 1989, including all fines liquidated by this Order, on behalf of the respective judgment creditors. Said special commissioners are directed to proceed immediately

to collect all such fines and are authorized and empowered to undertake all necessary or convenient means of collection, including, but not limited to, docketing, interrogatories, levy, execution, garnishment, attachment, and creditor's bill, wherever the defendants may have property or assets, until all such fines are paid in full. In addition, said special commissioners upon petition to the Court for leave so to do shall have the power to employ counsel and accountants to assist them in their work. All fines collected shall be paid to the Clerk of this Court and distributed by the Court.

The following individuals, International officers and members of the International's Executive Board, are ORDERED to take all actions necessary to effect the payment of all fines liquidated by Orders entered on or after July 27, 1989, against International Union, United Mine Workers of America, including all fines liquidated by this Order, no later than 5:00 p.m. September 26, 1989:

Richard L. Trumka
Cecil E. Roberts
John J. Banovic
Tommy E. Buchanan
Robert Burchell
Charles Dixon
Larry Joe Draper
Howard L. Green
Anthony Grajeda
Stuart L. Johnson
Daniel J. Kane
Anthony R. Kujawa
Lyle McGowan
Roger T. Myers
Jerome Neal
Walter E. Oviatt

Cecil M. Partin
William C. Ray
James Russell
Thomas J. Shumaker
Jimmy H. Smith
Jackie Stump
C. Danny Surface
Stephen F. Webber

For good cause it is ORDERED that execution shall issue on September 27, 1989, as to all fines liquidated by this Order which have not been paid in full to the Clerk by 5:00 p.m. September 26, 1989.

The International shall immediately cause a copy of this Order to be served personally on each of the foregoing individual members and mailed to them certified mail, return receipt requested, restricted delivery.

ENTER: this 21st day of September, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen:

/s/ Stephen M. Hodges
Counsel for Plaintiffs

Seen and Objected to:

/s/ William D. Holtz
Counsel for International

/s/ James J. Vergara Jr.
Counsel for District 28
and Other Defendants

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

CLINCHFIELD COAL COMPANY, *et als.*,
Plaintiffs,

vs.

THE INTERNATIONAL UNION, UMWA, and
DISTRICT 28, UMWA,
Defendants.

COURT'S RULING

July 27, 1989

[Filed Sep. 21, 1989]

APPEARANCES:

STEPHEN M. HODGES, Esquire, Abingdon, Virginia; WADE W. MASSIE, Esquire, Abingdon, Virginia; and KARL KINDIG, Esquire, House Counsel, Lebanon, Virginia,

Counsel for Plaintiffs.

JAMES M. HAVILAND, Esquire, Charleston, West Virginia, and MICHAEL J. PASSINO, Esquire, Nashville, Tennessee,

Counsel for International, UMWA.

[2] COURT'S RULING

The Honorable Donald A. McGlothlin, Jr., Judge of the Twenty-Ninth Judicial Circuit, sitting at Lebanon, rendered the following opinion in the above styled cause on the 27th day of July, 1989.

The court reporter, Alice R. Gordon, was duly sworn.

THE COURT: Thank you, gentlemen. I first want to say that, although counsel have tried to demean their own, their brief and their argument, I think they have done a very fine job of exploring the issue, and I have read your cases, and I agree with you that there are no cases at least that were cited to the court or the court could find in its research that speak to this type of a fact situation.

However, the court is convinced on reading the cases that the Supreme Court's reasoning and languages in the *Wisconsin Employment Board* case when it says that the individual state courts have a, or states, individual states, have an overriding interest in enforcing and maintaining peace in the public sector, that when they say that, that they mean that, and I don't, I cannot imagine a situation when the mere issuance of an injunction or the beginning of proceedings by any federal tribunal or any federal agency could take away from the state that responsibility to its [3] citizens. And I think that that is exactly what that case is trying to impart, that the Commonwealth of Virginia in this particular case has a vital interest in what happens in the state as far as possible violent acts toward its citizens that it has as a result of the social contract with its citizens, a duty to enforce peace or to try to maintain peace.

And, therefore, I am going to overrule the motion to dismiss this sixth rule. I don't think that this court, especially, well, I'll just, I'll just tell you, I find that the plaintiffs have shown that the defendants and their members have engaged in acts of violence that are directly related to their picketing in this labor dispute and that they have been characterized by mass picketing and blocking of

rights of ways, both public and private; the hurling of rocks and other missiles at vehicles; using public highways in the presence of and while the general motoring public are using those highways; and that, beyond that, that these members have intimidated or attempted to intimidate by threats and by violence members of this community who are attempting to exercise their right to go to work and make a living under the Virginia law.

And I don't think that this court can shirk from this responsibility, and I do not feel that the [4] Section 10-J injunction protects the rights of the Virginia citizens. That injunction is designed, in this court's opinion, to enforce the National Labor Relations Act and its purposes.

This court's injunction is designed to keep the peace here in Virginia and to be sure that it's, that the citizens of this state, in these communities, can live in peace, free from the acts of terror which have been committed upon this community.

I want to make one more comment so that the record will be clear, and I am not taking your argument, Mr. Passino, in any manner as any threat on behalf of your clients but, simply, as a recognition of facts that do exist with regard to these wildcat strikes.

The court has considered the fact that shortly after this court announced very substantial fines against the union, and very shortly, I think, perhaps, the next working day over the weekend, Judge Williams in the Federal District Court announced the incarceration of three of the union leaders for violation of that court's injunction, that there were, I guess we'll call them wildcat strikes or strikes that were supposedly unauthorized by the International union, that were also supposedly in support of the strike that has been authorized here in Virginia and Kentucky [5] and West Virginia against the Pittston Coal Group and its subsidiaries, but after having thought about these acts and their consequences, the court has determined that it cannot and will not be affected by what happens as a result of its decisions.

To do that would be to bow to pressure. Some people would call it extortion by, not necessarily by the parties that are before this court but, certainly, by some of their members, and it just cannot be tolerated.

Therefore, I have not allowed those facts, that argument, to affect what this court has done in any manner.

All right. With regard to the factual findings, in the fifth rule to show cause, the court finds that the plaintiffs have shown beyond reasonable doubt, although I am certainly not sure that that is the standard of proof, but there is no question, I am willing to say this, the court has applied that burden of proof out of an abundance of caution and trying to be fair to the defendants, but the court finds beyond a reasonable doubt that the following allegations have been proved.

The allegation in paragraph 64.vv concerning rocks being thrown at a vehicle driven by Dennis Yokum on May the 17th;

[6] The allegations in 64.xx concerning rocks being thrown at a vehicle driven by Jamie Justus on May 18;

The allegations in paragraph 64.yy concerning rocks being thrown at Marty Justus or at the vehicle he was operating on May 18th;

The allegations in paragraph 64.zz involving pellets that were propelled, shot at a vehicle at the Moss 3 scale house on May 18th;

Allegations in 64.ddd concerning ball bearing being propelled at the vehicle being driven by James Blackburn on May 24th;

The allegations contained in paragraph 64.ggg concerning an assault upon Marty on Justus on. I'm sorry, on June the 1st;

The allegations in paragraph 75 concerning putting the devices known as jack rocks out and threatening of Carl K. Wallace. I believe that was a nighttime incident as he was getting off work on May the 17th;

And the allegations contained in paragraph 78 concerning following Mr. Jerry Simon in a threatening manner and use of a gun in that episode on May the 24th.

For each of these violations the court will liquidate the previously imposed prospective civil penalties in the sum of $100,000 per occurrence.

* * * *

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

In Chancery No. 12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

VS.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

ORDER DENYING POST-TRIAL MOTIONS AND AMENDING ORDER OF JULY 27, 1989

On August 16, 1989, plaintiffs and International Union, United Mine Workers of America ("International") appeared by counsel on the following motions:

(1) The union's Motion to Set Aside Order of July 27, 1989 as Being Contrary to the Law and Evidence.

(2) The union's Motion for Modification of July 27, 1989 Order.

(3) Plaintiff's Motion to Amend Order of July 27, 1989.

Counsel for District 28 could not be present but authorized counsel for International to proceed on behalf of District 28 and agreed that the hearing should proceed in his absence.

Upon consideration of the arguments of counsel and a review of the evidence, it appearing proper, it is ORDERED that each of the three motions under consideration be and are hereby denied.

It appearing that the July 27, 1989 Order contains two errors, it is hereby amended, without objection, as follows:

Under "Fifth Rule"

"64dd" is amended to read "64vv."

Under "Sixth Rule"

The word "violence" beside the number 87a is amended to read "roving."

The endorsement of this order by counsel for District 28 is hereby dispensed with.

Each party objected to the Court's rulings to the extent adverse.

Seen:

/s/ William O. Shults
WILLIAM O. SHULTS
Counsel for International Union,
United Mine Workers of America

/s/ Stephen M. Hodges
STEPHEN M. HODGES
Counsel for Plaintiffs

ENTER, this 17th day of August, 1989.

/s/ Donald A. McGlothlin, Jr.
Circuit Judge

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

In Chancery

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

vs.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

THIRD ORDER ADJUDICATING DEFENDANTS IN CONTEMPT

On July 19-21, 1989, this matter was before the Court on the Fifth and Sixth Rules to Show Cause heretofore issued against defendants International Union, United Mine Workers of America (International), and District 28, United Mine Workers of America (District 28). Following presentation of the evidence and arguments of counsel, the Court took the case under advisement, announcing its rulings on July 27, 1989.

Upon consideration of which, the Court finds that the evidence shows beyond a reasonable doubt that the defendants are in contempt of Court for the following violations of the Court's injunctions and liquidates a portion of the prospective fines previously announced on May 16 and June 2, 1989, as follows:

FIFTH RULE

64dd	**—violence**	**$ 100,000**
64xx	**—violence**	**$ 100,000**
64yy	**—violence**	**$ 100,000**
64zz	**—violence**	**$ 100,000**
64ddd	**—violence**	**$ 100,000**

64ggg	—violence	$ 100,000
75	—violence	$ 100,000
78	—violence	$ 100,000

SIXTH RULE

81a,b	—picket limitations	$ 20,000
82	—use of mirror	$ 5,000
83a,b,e	—picket limitations	$ 20,000
84a,b	—picket limitations	$ 20,000
85b	—violence	$ 100,000
86b	—picket limitations	$ 20,000
87a	—violence	$ 100,000
89a	—violence	$ 100,000
90a	—violence	$ 100,000
91c,d	—violence	$ 100,000
92a	—roving	$ 100,000
92b	—violence	$ 100,000
94b	—violence	$ 100,000
94c	—roving	$ 100,000
95	—roving	$ 100,000
97	—violence	$ 100,000
98a	—roving	$ 100,000
99a	—roving	$ 100,000
99f	—violence	$ 100,000
100a	—roving	$ 100,000
100d	—violence	$ 100,000
101a	—roving	$ 100,000
102a	—roving	$ 100,000

102c	—violence	$ 100,000
103a	—roving	$ 100,000
104a	—roving	$ 100,000
104c	—violence	$ 100,000
104d	—violence	$ 100,000
105a	—roving	$ 100,000
105c	—violence	$ 100,000
106a	—roving	$ 100,000
107a	—roving	$ 100,000
108a	—roving	$ 100,000
109a	—roving	$ 100,000
110a	—picket site	$ 20,000
110b	—picket site	$ 20,000
111	—failure to report violations	$ 140,000
112	—failure to use all lawful means to insure compliance	$ 500,000
TOTAL		$4,465,000

The foregoing fines are assessed against International and District 28 jointly and severally and shall be paid as follows within 15 days:

$2,000,000	to the Clerk of this Court for the Commonwealth of Virginia
$1,465,000	to the Treasurer of Russell County, Virginia
$1,000,000	to the Treasurer of Dickenson County, Virginia

It is further ORDERED that the Court's injunctions be, and they are hereby, supplemented as follows: International and District 28, and their officers, members,

agents, servants, employees, and those acting in association or concert with them, are enjoined from blocking or impeding by any means, motor traffic or otherwise, access to any facility of plaintiffs or their contractors, and they are also enjoined from blocking or impeding movement on any highway or private way used by plaintiffs or plaintiffs' contractors or by any of their employees or others providing goods or services.

It is further ORDERED that within 10 days District 28 shall cause a copy of this Order to be served on each and every of its members.

It is further ORDERED that within 10 days International shall cause the following papers to be served on each and every of its members:

1. The Court's Amended Injunction of April 21, 1989;
2. The Court's Order of May 18, 1989, adjudicating defendants in contempt; and
3. The Court's Order of June 7, 1989, adjudicating defendants in contempt; and
4. This Order.

Upon consideration of the briefs and arguments of counsel, the Court being of the opinion that the defendants' motion to dismiss the Sixth Rule is not well-founded, it is ORDERED that said motion be, and it is hereby, overruled.

All prior pronouncements of prospective fines shall remain in full force and effect and shall apply to the injunctions as supplemented herein.

Defendants object to this Order. Plaintiffs object to the fines not being paid to them.

ENTER: this 27th day of July, 1989.

/s/ Donald A. McGlothlin, Jr.
Judge

Seen:

/s/ Stephen H. Hodges
Counsel for Plaintiffs

/s/ James M. Haviland
Counsel for International

/s/ James Vergara/J.M.H.
Counsel for District 28 and
Other Defendants

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

In Chancery

CLINCHFIELD COAL COMPANY, *et al*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al*,
Defendants.

SECOND ORDER ADJUDICATING DEFENDANTS IN CONTEMPT

On June 2, 1989, this matter was before the Court on Rules to Show Cause issued by the Clerk of this Court against defendants International Union, United Mine Workers of America ("International") and District 28, United Mine Workers of America ("District") on May 26, 1989.

Whereupon, testimony and other evidence was presented in support of the allegations in the Rules. The Court heard arguments of counsel.

Upon the evidence presented and the arguments of counsel, the Court finds that the evidence proves beyond a reasonable doubt that International and District have intentionally violated the Court's Injunction entered April 13, 1989 and Amended Injunction entered April 21, 1989 in every respect set forth in the Rules dated May 26, 1989 and are in contempt of this Court for such violations, except that the Court finds no violations on May 15 at McClure Mine and Plant and the Court is

not considering any violation with respect to the service requirements contained in its May 18 Order.

The Court further specifically finds that International and District have not complied with the Court's injunctions since the entry of the Court's Order of May 18, 1989.

Upon the said findings, it is ADJUDGED, ORDERED and DECREED as follows:

1. The following fines are hereby imposed against International and District for violations of the Court's injunctions on the dates indicated:

a. May 17, 1989:

International	**$ 20,000.00**
District	**$ 20,000.00**

b. May 18, 1989:

International	**$ 50,000.00**
District	**$ 50,000.00**

c. May 19, 1989:

International	**$150,000.00**
District	**$ 75,000.00**

d. May 22, 1989:

International	**$250,000.00**
District	**$100,000.00**

e. May 23, 1989:

International	**$250,000.00**
District	**$100,000.00**

f. May 24, 1989:

International	**$500,000.00**
District	**$200,000.00**

g. May 25, 1989:

International	**$500,000.00**
District	**$200,000.00**

The totals of fines imposed hereby are:

International	$1,720,000.00
District	$ 745,000.00

2. All fines imposed hereby represent liquidation of the prospective fines announced by the Court's Order of May 18, 1989. It is the Court's intention that these fines are civil and coercive.

It appearing to the Court that the Commonwealth of Virginia has at great cost supplied numerous officers of the Virginia State Police and other state personnel, large amounts of equipment and supplies, and has gone to great effort, all in an attempt to keep the peace and enforce the rights of plaintiffs and their employees and contractors with regard to the labor dispute between the parties to this action; and it further appearing that both defendants, by counsel, have expressed their objection to any part of the fines being payable to plaintiffs and argue to the contrary that all fines assessed should be payable to the Commonwealth; and it further appearing proper under all the circumstances of the case, the Court ORDERS that all fines imposed by this Order shall be payable to the Commonwealth of Virginia c/o the Clerk of this Court within 15 days of the date of this Order. Plaintiffs objected to that portion of this Order which orders the civil contempt fines payable to the Commonwealth, it being their position that such fines should be paid to them.

3. The Court defers and takes under advisement the revocation of the suspension of portions of the fines announced in the Court's Order of May 18, 1989 and the sanctions, if any, for contempts committed on May 8, 11, 12, 15 and 16, 1989.

4. For any non-violent violations of the Injunction or the Amended Injunction which occur on or after June 5, 1989, the following prospective civil contempt fines will

be imposed for the purpose of coercing the defendants to comply with the Court's injunctions:

a. For the first day upon which any violation occurs:

International	$ 500,000.00
District	$ 200,000.00

b. For the second day upon which any violation occurs:

International	$1,000,000.00
District	$ 400,000.00

c. For the third day upon which any violation occurs:

International	$2,000,000.00
District	$ 800,000.00

d. For the fourth and all subsequent days upon which any violation occurs the respective fines against International and District will double each day, without limitation.

5. International and District will file with this Court on or before 5:00 p.m., June 6, 1989, a list of all U.M.W.A. members residing in this Commonwealth and shall tender a check sufficient to pay the costs for service on each such member a copy of each of the following documents:

a. The Court's Amended Injunction dated April 21, 1989.

b. This Order.

In addition to the foregoing, the U.M.W.A. membership is advised that the Court's Order of May 18, 1989, has specified a $100,000 minimum civil fine against International, District, and its members for each instance of a violent violation of the Court's injunctions.

Said Sheriffs shall make service on such members without delay and make their returns to this Court.

6. International and District are ordered and enjoined to post, conspicuously at each of the 17 picket locations designated below, a list of the names of each person

assigned to picket at that site on that day and the hours or shift, if shifts are specified, that each person is permitted to be at the site. In the event that any picket, observer or associate of pickets shall appear at a picket site whose name is not on the list, the picket captain shall notify him of his violation of this Order, shall order him to leave immediately, and if he shall fail to leave, the picket captain shall report the violation to a Virginia State Police officer on duty at the site. If the police officer on duty observes numbers of persons present in excess of the limitation stated in this Order, or if violations are reported by a picket captain, the State Police officer shall notify any such person that he is in violation of this Order and he shall be ordered to leave.

In the event such person fails to leave immediately, a report of that fact will be made to this Court by affidavit of the Virginia State Police officer, sworn before any person authorized by law to administer oath, and a rule shall be issued for the individual to show cause why he should not be held in contempt of this Court for violating this Order. If the person is found to be in violation, the Court will impose a fine and jail term as appropriate.

It shall be sufficient for the officer of the Virginia State Police to prepare a single affidavit at the end of each day setting forth the identity of each person at a picket site who is alleged to be in violation of this Order.

If any person at a picket site shall refuse to identify himself to the picket captain or a Virginia State Police officer upon request, the officer shall advise such person that his refusal violates this Court's order.

The Amended Injunction is hereby further amended to allow at each picket site designated below the following number of pickets, observers or associates of pickets:

	No. of Persons Allowed
1. Headquarters	30
2. Moss No. 3	20

3. Central Shop	8
4. Laurel Mountain	12
5. Yowling Branch	8
6. Lambert Fork	20
7. Dante Office	20
8. Old Smith Gap	20
9. Banner Dock	8
10. McClure Mine	20
11. McClure Preparation Plant	20
12. Maple House	12
13. Open Fork No. 2	8
14. Kilgore Creek	8
15. Triple C	12
16. Splashdam Portal	20
17. Splashdam Loadout	20

Due notice of presentation of this Order for entry was given to counsel for District who, by agreement, presented his arguments by telephone and who objected to the rulings of the Court except as previously stated herein. Endorsement by counsel for District is dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.

ENTER: this 7th day of June, 1989.

/s/ Donald A. McGlothlin, Jr.
DONALD A. MCGLOTHLIN, JR.
Judge

Seen:

KARL K. KINDIG, ESQ.
CLINCHFIELD COAL COMPANY
P.O. Box 4000
Lebanon, Virginia 24266

PENN, STUART, ESKRIDGE & JONES
P.O. Box 2288
Abingdon, Virginia 24210

By /s/ Stephen M. Hodges
STEPHEN M. HODGES
Counsel for Clinchfield
Coal Company and Sea "B"
Mining Company

Seen and objected to except
as to disposition of fines:

UNITED MINE WORKERS OF AMERICA
INTERNATIONAL UNION
900 Fifteenth Street, N.W.
Washington, D.C. 20005

By /s/ William O. Shults
WILLIAM O. SHULTS
Counsel for International Union,
United Mine Workers of America,
and Marty Hudson

VIRGINIA:

In the Circuit Court for the County of Russell on Thursday; the 18th day of May in the year of our Lord, One thousand nine hundred eighty nine.

Present: The Honorable Donald A. McGlothlin, Jr., Judge

#12,486

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs

vs.

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al*
Defendants

ORDER ADJUDICATING DEFENDANTS
IN CONTEMPT

On May 16, 1989, this matter was heard upon the Rules to Show Cause of April 28, 1989, (served on the defendants International Union, United Mine Workers of America, and District 28, United Mine Workers of America, on April 28, 1989), the Rules to Show Cause of May 9, 1989 (served on said defendants on May 11, 1989 (served on said defendants on May 12, 1989).

Upon consideration of the evidence presented, and the arguments of counsel, the Court finds that there have been 72 separate violations of the injunction and amended injunction previously entered in this matter, that these violations include 15 instances of violence attributable to said defendants, 43 instances of exceeding picket numbers, 10 instances of blocking ingress and egress to plaintiffs' facilities, and 4 instances of reporting or technical type violations of the amended injunction; and the Court fur-

ther finds that these violations involve 13 days of mass picketing and 12 days of blocking of plaintiffs' facilities.

Upon consideration of which, and for the reason stated in the Court's opinion from the bench following the trial which are incorporated hereby by reference, it is ADJUDGED, ORDERED and DECREED as follows:

(1) That Marty D. Hudson, who is coordinator of this strike for defendant International, is in contempt of the Court's injunctions and is fined $1,000 for each he participated in violations of these injunctions, that is to say, the sum of $13,000; however, $12,000 of said amount is suspended on the condition that in the future he strictly comply with the terms of said injunctions and, within 10 days from entry of this decree, pay $1,000 to the Clerk of this Court for the Commonwealth of Virginia;

(2) That Jackie Stump, who is President of defendant District 28, is in contempt of this Court's injunctions and is fined $1,000 for each day he participated in violations of these injunctions that is to say, the sum of $13,000; however, $12,000 of said amount is suspended on the condition that in the future he strictly comply with the terms of said injunctions and, within 10 days from entry of this decree, pay $1,000 to the Clerk of this Court for the Commonwealth of Virginia;

(3) That defendant, District 28, is in contempt of the Court's injunctions and is fined $176,000 (of which $26,000 is for nonviolent violations and $150,000 for violent violations); however, $150,000 of said amount is suspended on the condition that in the future it strictly comply with the terms of said injunctions, and, within 10 days from entry of this decree, pay $26,000 to the Clerk of this Court for the Commonwealth of Virginia;

(4) That defendant International Union is in contempt of the Court's injunctions and is fined $440,000 (of which $65,000 is for nonviolent violations and $375,000 is for violent violations); however, $250,000 of

said amount is suspended on the condition that it strictly comply with the terms of said injunctions and, within 10 days from entry of this decree, pay $190,000 to the Clerk of this Court for the Commonwealth of Virginia.

It is further ADJUDGED, ORDERED and DECREED, that in addition to any other sanctions the Court may impose, that the following minimum civil fines will be assessed against defendant International, District 28 and its members:

(1) $100,000 for each instance of any future violent violation of the Court's injunctions;

(2) $20,000 per day for each instance of any future nonviolent violation of the Court's injunctions, such as exceeding picket numbers, blocking entrances or exits, exceeding space or location limitations, or having roving pickets;

(3) $5,000 for each day of any other violation of the Court's injunctions.

It is further ADJUDGED, ORDERED and DECREED that defendants, at their expense, shall immediately cause a copy of this order and the amended injunction of April 21, 1989, to be served on every member of District 28.

Counsel for defendants have either endorsed this decree or had due notice of its presentation for entry.

ENTER this the 18th day of May, 1989.

/s/ Donald A. McGlothlin, Jr.
DONALD A. MCGLOTHLIN, JR.
Judge

Seen:

/s/ Stephen M. Hodges
Counsel for Plaintiff

Seen and Objected to:

/s/ William O. Shults
Counsel for Defendant
International Union

/s/ James J. Vergara Jr.
Counsel for defendant
District 28

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

In Chancery

CLICHFIELD COAL COMPANY, *et al*,
Plaintiffs,

vs.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al*,
Defendants.

AMENDED INJUNCTION

This day came the plaintiffs by counsel upon their motion to amend the temporary injunction entered by the Court on April 13, 1989. The Court finds that verbal notice of the hearing was given to International and District 28 on the morning of April 20, 1989. The Court has been contacted by counsel for both, and has been advised that because of conflicting demands, counsel will not be present. However, the Court finds that the situation now prevailing in connection with the strike does not justify a delay in the hearing.

Upon the evidence presented, the Court finds as follows:

1. Notwithstanding the injunction entered by the Court on April 13, 1989, serious incidents of mass picketing, roving picketing, violence, threats, intimidation, and property destruction have continued throughout many areas of Clinchfield's operating system in Dickenson and Russell Counties, Virginia.

2. The acts described above are being committed by members of International and District 28 and the locals

in question, or those acting for them, and are an outgrowth of the strike now in progress.

3. The acts described will continue if not enjoined.

4. The strike was called by International and is being conducted and organized by International and District 28.

5. The harm done to the defendants by the entry of the injunctive relief hereby granted is light compared to the harm which will be suffered by the plaintiffs if such relief should be denied.

6. The plaintiffs have no adequate remedy at law.

Wherefore, it is adjudged, ordered and decreed that International and District 28 and Local Unions 1426 and 7170, and their officers, agents, servants, employees and members be and are hereby restrained and enjoined from committing or attempting to commit any of the following acts:

1. Placing or permitting its members to congregate at entrances or exits to any of plaintiffs' offices, mine sites, plant sites or other facilities or using mirrors, lights or other devices in such manner as to obstruct the vision of operators of vehicles entering or exiting, of the roadway for oncoming traffic.

2. Causing or permitting their members to throw or cause to be thrown rocks or any other object or missile at persons employed by plaintiffs or plaintiffs' contractors or at vehicles owned or operated by plaintiffs or by others performing work or services for plaintiffs at any location in the Commonwealth of Virginia.

3. Placing any objects which by their design might puncture or cause damage to vehicle tires upon any surface which might be used by the vehicles of plaintiffs, their employees or others performing work or services for plaintiffs in the Commonwealth of Virginia.

4. Threatening to physically harm any of plaintiffs' employees or others performing work or services for plaintiffs or their families or their property.

5. Purposely following or trailing the plaintiffs' employees, contractors, or the family members of either in vehicles or on foot, in such a manner as would reasonably be expected to frighten them.

6. Causing or permitting any person to interfere or attempt to interfere with plaintiffs' employees or others performing work or services for plaintiffs in the performance of their duties for plaintiffs, by the use of insulting or threatening language directed toward such persons to induce or attempt to induce them to quit employment or refrain from seeking employment.

7. Placing or permitting pickets, observers or associates of pickets more than the number of persons indicated at the designated locations shown on Exhibit A.

8. Placing or permitting the pickets, observers or associates of pickets at such designated locations so that the extremities of the picket line at each such designated location exceed a distance of 200 feet.

9. Having or permitting any picket site along any public or private road over which plaintiffs or their contractors haul coal more than 500 feet from the main entrance to any company facility designated on Exhibit A or any other company facility.

10. Having or permitting any roving or moving pickets.

It is further adjudged, ordered and decreed that the International, District 28 and the said local unions and their respective officers, agents, servants, employees and members shall:

11. Place a designated supervisor or captain (who shall count as one of the pickets or observers) at each

picket site designated by this decree to be present at said picket site at all times during picketing and to supervise the activities of the pickets, observers or associates of pickets, and to require obedience to this decree. The designated supervisor or captain shall be an officer, agent or specially designated member of the International, District 28 or a local union within District 28.

12. Keep and make available to the Court, police officers and plaintiffs the names of the designated supervisors or captains at each site upon request.

13. Report to the Court in writing the date and nature of all violations of this injunction and the names of all persons who participate in such violations.

14. Use all lawful means reasonably available to them to insure compliance with the provisions of this injunction and specifically use their best efforts to communicate the terms of this injunction to all persons known to them to be likely to be present at or participate in any picketing or other action in connection with the present strike.

The bond heretofore given by plaintiffs will continue in full force and effect as to the injunction as amended. The injunction will remain in effect until 11:59 p.m., October 12, 1989.

Requested:

PENN, STUART, ESKRIDGE & JONES
P.O. Box 2288
Abingdon, VA 24210

By /s/ Stephen M. Hodges
STEPHEN M. HODGES
Counsel for Defendants

ENTER, this 21st day of April, 1989 at 11:30 a.m.

/s/ Donald A. McGlothlin, Jr.
Judge

EXHIBIT A

Clinchfield Coal Company Facilities

	No. Persons Allowed
1. Headquarters	15
2. Moss No. 3	10
3. Central Shop	4
4. Laurel Mountain	6
5. Yowling Branch	4
6. Lambert Fork	10
7. Dante Office	10
8. Old Smith Gap	10
9. Banner Dock	4
10. McClure Mine	10
11. McClure Preparation Plant	10
12. Maple House	6
13. Open Fork No. 2	4
14. Kilgore Creek	4
15. Triple C	6
16. Splashdam Portal	10
17. Splashdam Loadout	10

VIRGINIA:

IN THE CIRCUIT COURT OF RUSSELL COUNTY

In Chancery

CLINCHFIELD COAL COMPANY, *et al.*,
Plaintiffs,

vs.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

INJUNCTION

On April 12, 1989, this cause came on to be heard before the Court on the plaintiffs' verified bill of complaint, seeking a temporary injunction. International Union, United Mine Workers of America ("International") and District 28, United Mine Workers of America ("District 28") appeared specially by their respective counsel, no other defendant appeared. The parties presented evidence, legal authorities and argued their respective positions.

Based upon the verified complaint, the evidence, arguments and authorities presented, the Court finds that certain of the acts complained of in the bill of complaint constitute a violation of Section 40.1-53 and Section 40.1-66 of the Code of Virginia, and of the rights of the plaintiff, Clinchfield Coal Company ("the Company"); that such acts are likely to continue; that the Company will suffer irreparable injury because of such acts if not enjoined; that the Company has no adequate remedy at law for such immediate and irreparable injury and loss, that no harm to the defendants will result from

the entry of a temporary injunction, and that the Court is otherwise satisfied of the plaintiffs' equity.

Now, therefore, for the reasons stated, it is ADJUDGED, ORDERED and DECREED that International and District 28, Local Union #7170 U.M.W.A., and Local Union #1426 U.M.W.A., and their officers agents, servants, employees and members be and hereby are restrained and enjoined from committing or attempting to commit any of the following acts:

1. Placing or permitting its members to congregate at entrances or exits to plaintiffs' Lambert Fork #2 Mine site in such a manner as to obstruct the vision of operators of vehicles, entering or exiting, of the roadway for oncoming traffic.

2. Causing or permitting their members to throw or cause to be thrown rocks or any other object or missile at persons employed by plaintiffs or plaintiffs' contractors or at vehicles owned or operated by plaintiffs or by others performing work or services for plaintiffs at Lambert Fork #2 Mine and between Lambert Fork #2 Mine and Moss 3 Preparation Plant or any other of plaintiffs' properties.

3. Placing any objects which by their design might puncture or cause damage to vehicle tires upon any surface which might be used by the vehicles of plaintiffs, their employees or others performing work or services for plaintiffs.

4. Threatening to physically harm any of plaintiffs' employees, or others performing work or services for plaintiffs, or their families or their property.

5. Placing or permitting more than 10 persons as pickets, observers or associates of pickets at or near plaintiffs' Splashdam Mine complex on Greenbriar Creek, and/or placing or permitting more than 10 persons as pickets, observers or associates of pickets at or near the

Lambert Fork #2 Mine including the route taken by vehicles hauling coal from Lambert Fork #2 Mine to plaintiffs' Moss 3 Preparation Plant, and further from placing or permitting such pickets, observers and associates to be located on the traveled portion of any public or private right-of-way used by those entering or exiting Lambert Fork #2 Mine or hauling coal therefrom.

6. Causing or permitting their members to interfere or attempt to interfere with plaintiffs' employees or others performing work or services for plaintiffs in the performance of their duties for plaintiffs by the use of insulting or threatening language directed toward such persons to induce or attempt to induce them to quit employment or refrain from seeking employment.

It is further ADJUDGED, ORDERED and DECREED that International and District 28 and Local Unions #1426 and 7170, UMWA, and their officers, agents, servants, employees and members, shall use all lawful means reasonably available to them to insure compliance with the provisions of this injunction and specifically shall use their best efforts to communicate the terms of this injunction to all persons known to them to be likely to be present at or participate in any picketing or other acts done in connection with the present strike.

All temporary relief requested by the bill of complaint not herein expressly granted is denied.

Pursuant to the provisions of Section 8.01-624 of the Code of Virginia, this temporary injunction shall be effective immediately upon the giving of bond as described herein below and shall expire at 11:59 p.m. on October 12, 1989, unless sooner vacated.

Pursuant to the provisions of Section 8.01-631 of the Code of Virginia, this injunction shall not take effect until bond be given conditioned to pay all costs as may

be awarded against the plaintiffs and all such damage as may be incurred in case the injunction shall be dissolved, which bond shall be in the penalty and amount of $25,000.00. The Court approves a bond in such penalty with Clinchfield Coal Company as principal and United States Fidelity and Guaranty Company as surety.

ENTER this 13th day of April, 1989, at 4:35 p.m.

/s/ Donald A. McGlothlin, Jr.
DONALD A. MCGLOTHLIN, JR.
Judge

Seen and objected to to the extent relief requested denied:

PENN, STUART, ESKRIDGE & JONES

By /s/ Stephen M. Hodges

Seen and objected to to the extent relief requested denied:

/s/ William O. Shults
Counsel for International Union, U.M.W.A.

_____

Counsel for District 28, U.M.W.A.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 8th day of January, 1993.

Record No. 920299
Court of Appeals Nos. 1953-89-3 and
1508-90-3 through 1513-90-3

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Appellants.

against

CLINCHFIELD COAL COMPANY, *et al.*,
Appellees.

Record No. 910634
Court of Appeals Nos. 0790-89-3, 0904-89-3,
1287-89-3, 1333-89-3, 1629-89-3 and 1743-89-3

JOHN L. BAGWELL, Special Commissioner,
Appellant,

against

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, *et al.*,
Appellees.

Upon a Petition for Rehearing

On consideration of the petition of The International Union, United Mine Workers of America and another

to set aside the judgments rendered herein on the 6th day of November, 1992 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,
Teste:

/s/ [Illegible]
Clerk

CITED PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV, Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge

the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.